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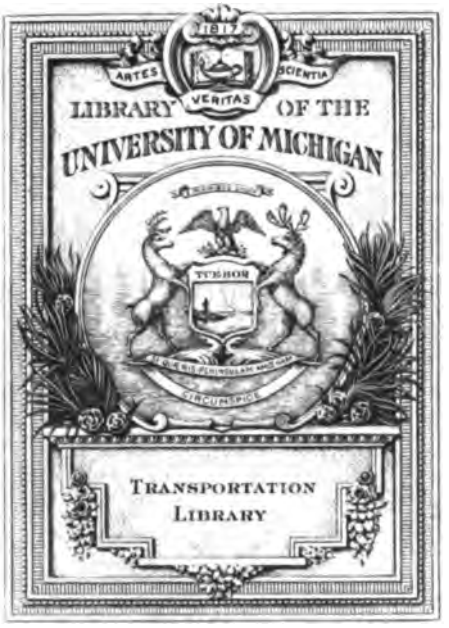
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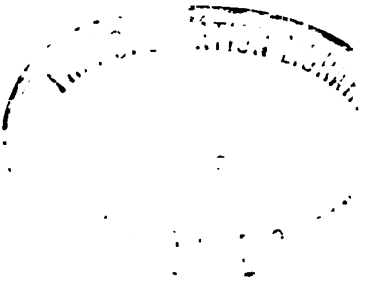
DECISIONS OF THE

INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

JUNE TO DECEMBER, 1919

REPORTED BY THE COMMISSION



WASHINGTON
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1920

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 9883.

DEWEY PORTLAND CEMENT COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 4, 1919. Decided July 5, 1919.

1. Rates on slack and other grades of coal taking the same rates, in carloads, from mines on the St. Louis-San Francisco Railway in the Pittsburg district in Kansas to Dewey, Okla., not found unreasonable, but found unduly prejudicial. Undue prejudice ordered removed and proper relationship of rates prescribed.
2. Combination rate on this traffic from mines on the Missouri Pacific Railroad in the Pittsburg district to Dewey found unreasonable. Through route and reasonable maximum joint rate prescribed.
3. Reparation denied for lack of proof of damage.

E. H. Hogueland and *R. W. Moore* for complainant.

B. L. Glover and *L. T. Sunderland* for Ash Grove Lime & Portland Cement Company; and *A. E. Helm* and *F. S. Jackson* for Public Utilities Commission for the State of Kansas, interveners.

F. E. Andrews for defendant carriers; *J. R. Koontz*, *T. J. Norton*, and *Robert Dunlap* for Atchison, Topeka & Santa Fe Railway Company; *J. W. Allen* and *C. S. Burg* for Missouri, Kansas & Texas Railway Company and its receiver; *C. C. P. Rausch* and *Henry G. Herbel* for Missouri Pacific Railroad Company; and *H. E. Morris* and *Arthur E. Haid* for St. Louis-San Francisco Railway Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, HALL, AND AITCHISON.

BY DIVISION 1:

At Dewey, Okla., a point on the Missouri, Kansas & Texas Railway, hereinafter termed the M., K. & T., about 26 miles southwest of Coffeyville, Kans., and on the Atchison, Topeka & Santa Fe Railway, hereinafter styled the Santa Fe, 14 miles south of the Kansas-

Oklahoma state line, complainant, a corporation, manufactures cement in the sale of which it competes with manufacturers at Iola, Mildred, Humboldt, Fredonia, Chanute, and Independence, Kans., points in the so-called Kansas gas belt. These plants use large quantities of slack coal, which they secure principally from Crawford and Cherokee counties in the extreme southeastern section of Kansas, hereinafter called the Pittsburg district, in which there are mines served by the carriers reaching Dewey, also by the St. Louis-San Francisco Railway, hereinafter termed the Frisco, and the Missouri Pacific Railway.

By complaint filed September 21, 1917, complainant alleged that the rates on slack, nut, pea, and mill coal, all taking the same rates and hereinafter referred to as slack coal, from mines in the Pittsburg district on the lines of the Santa Fe, M., K. & T., and Frisco to Dewey, were unreasonable, unjustly discriminatory, and unduly prejudicial to complainant in favor of its competitors in the gas belt. It asks for reparation and the establishment of reasonable and just rates for the future; also for the establishment of through routes and joint rates via the Missouri Pacific and M., K. & T. to Dewey from mines in the Pittsburg district on the line of the Missouri Pacific. At the hearing the Ash Grove Lime & Portland Cement Company, engaged in the manufacture of cement at Chanute, intervened. In view of the relationship between the intrastate rates from the Pittsburg district to Kansas points and the interstate rates to Dewey, the Public Utilities Commission of Kansas filed a brief and was represented at the oral argument.

Prior to the year 1917 the defendant carriers maintained rates on this traffic of 45 cents per net ton for single-line hauls from the Pittsburg district to the gas-belt points, and the Santa Fe and the M., K. & T. separately applied the 45-cent rate from mines on their lines to Dewey. The Frisco and the M., K. & T. maintained joint rates of 55 cents from mines on the former to points in the gas belt served by the M., K. & T. and to Dewey. The Missouri Pacific concurred in no joint rates to points in the gas belt or to Dewey. On January 11, 1917, the joint rates of the Frisco and M., K. & T. to Dewey were increased to 70 cents, and on July 20, 1917, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, the rates of the Santa Fe and the M., K. & T. to the same destination were increased to 60 cents and the joint rates of the Frisco and M., K. & T. to 85 cents. Increases were also made in the combination rates from mines on the Missouri Pacific to Dewey. The rates to the Kansas gas belt were not increased.

On June 25, 1918, pursuant to General Order No. 28 issued by the Director General of Railroads, rates of 80 cents were established

from Santa Fe and M., K. & T. mines to the gas-belt mills and to Dewey, which restored the parity of rates formerly existing from those mines; the rates from the Frisco mines to Dewey were increased to $1.10, or 20 cents higher than the rates established to points in the gas belt involving two-line hauls; and the components of the combination rates from the Missouri Pacific mines to the gas-belt points and to Dewey were also increased. By supplemental complaint filed September 19, 1918, after the hearing the Director General of Railroads was made a party defendant. Therein it was averred that the restoration of the former parity of rates from the mines on the Santa Fe and M., K. & T. to the gas-belt mills and to Dewey had removed the unjust discrimination and undue prejudice so far as those carriers separately were concerned; that the joint rates from mines on the Frisco to Dewey in connection with the M., K. & T., in effect since January 11, 1917, were and are unreasonable, unjustly discriminatory, and unduly prejudicial; and that the combination rates from mines on the Missouri Pacific to Dewey over that line and the M., K. & T. were and are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 15 of the act.

Complainant prays for the establishment of reasonable rates for the future from mines on the Frisco over that line and the M., K. & T.; through routes and reasonable joint rates from mines on the Missouri Pacific to Dewey over that line and the M., K. & T.; and reparation on shipments which moved over the lines of the Santa Fe and M., K. & T., respectively, to Dewey between July 20, 1917, and June 24, 1918, both inclusive, and over the lines of the Frisco and the M., K. & T. from mines on the former on and after January 11, 1917. The Director General answered, but no further hearing was asked or had.

RATES FROM FRISCO MINES.

The only gas-belt cement-manufacturing point concerned reached by the Frisco is Fredonia. To that point the Frisco maintained a rate of 45 cents, and in connection with the M., K. & T. from mines on the latter joint rates in like amount, while from mines on the Frisco joint rates of 55 cents were maintained in connection with the M., K. & T. to Mildred, Iola, Humboldt, and Chanute. Until January 11, 1917, the Frisco in connection with the M., K. & T. extended the 55-cent rate to Dewey. This rate applied from Cherokee, Howe, Mulberry, Pittsburg, Scammon, and Wier, Kans., the rate from Arcadia, Midway, and Turck, Kans., and Minden and Alston, Mo., other coal-billing points on this line, being $1.10. On that date rates of 70 cents were established from all these points to Dewey.

Complainant compares the rates from the Pittsburg district to Dewey and gas-belt mills with the rate of $1, now $1.50, which applied from that district to the so-called salt-producing points in Kansas, including Salina, Hutchinson, Wichita, and Arkansas City. The average distance to the principal points in the salt-producing group is shown as about 216 miles; to the principal points in the former 45-cent group, as about 68 miles. The average one-line distance to Dewey is 102 miles. From these and other comparisons complainant contends that the rate to Dewey over one or two lines in excess of the one-line rate from the Pittsburg district to the gas-belt mills is unreasonable.

Defendants state that the former $1 rate from the Pittsburg district to salt-producing points was established to stimulate manufacturing industries and was unduly low. They compared the rates from the Pittsburg district to the gas-belt mills and Dewey with those applying from the Illinois coal fields to East St. Louis, Ill. From the so-called inner and outer groups of mines in that field to East St. Louis, average distances of 23 and 110 miles, rates of 52.5 and 67.5 cents applied at the time of the hearing, which rates represented increases of 15 cents per ton, under authority of *The Fifteen Per Cent Case*, *supra*, over rates approved in *Illinois Coal Cases*, 32 I. C. C., 659. At that time the Illinois intrastate rate for a distance of 23 miles was 54 cents. The rates from Missouri Pacific mines to Kansas City, Mo., an average distance of 149 miles, was 75 cents, intrastate, and 90 cents, interstate, both rates now being $1.10. The short-line distance from the Pittsburg district to Kansas City is said to be 129 miles, via the Kansas City Southern. In connection with these comparisons defendants point out that St. Louis and Kansas City consume vast quantities of coal.

Under the voluntarily established adjustment in effect prior to 1917 the rate to Dewey from Frisco mines was 10 cents higher than to the gas-belt mills. In this adjustment differences in distances were largely disregarded, and the differential appears to have been based principally upon the fact that a two-line haul is required to Dewey. The average distances from mines in the Pittsburg district to the gas-belt points and to Dewey are 79.1 and 96.5 miles, respectively. The group rates to the gas-belt mills apply to points intermediate which makes the average distance to those mills somewhat less than that shown.

Considering the comparatively greater average distance to Dewey than to the gas-belt points, we are of the opinion and find that the rates assailed on the traffic involved from Frisco mines in the Pittsburg district to Dewey in connection with the M., K. & T. in force prior to June 25, 1918, were not unreasonable but that they were and

that the present rate is, and for the future will be, unduly prejudicial to the extent that it exceeds or may exceed by more than 10 cents per net ton the rate contemporaneously maintained by the Frisco from the same mines to points served by it in the Kansas gas belt. As to the reasonableness of the present rate which was initiated by the Director General we have no evidence except the certificate of the Director General which accompanied the order increasing the rate. The Frisco and M., K. & T. will be required to establish a joint rate for the transportation of the traffic in question from mines on the Frisco in the Pittsburg district to Dewey which shall not exceed by more than 10 cents per net ton the rate contemporaneously maintained by the Frisco from the same points to points served by it in the Kansas gas belt.

RATES FROM MISSOURI PACIFIC MINES.

Complainant's witness testified that from mines on the Missouri Pacific rates of 45 cents applied to the gas-belt mills served by that carrier and combination rates of 70 cents to certain of the mills on the other lines and to Dewey, the rate to the latter being composed of rates of 45 cents to Coffeyville and a proportional rate of 25 cents beyond. An examination of the tariffs discloses that prior to March 25, 1916, there was a proportional rate on this traffic from Coffeyville to Bartlesville, Okla., a point several miles beyond Dewey, but that it was not applicable to Dewey; that on March 25, 1916, the proportional rate to Bartlesville was canceled; and that on September 10, 1917, the rate from Missouri Pacific mines to Coffeyville was made 60 cents and a rate of 40 cents established from Coffeyville to Dewey, making the combination rate to Dewey $1. Under said General Order No. 28 each of the components in the combination rate from Missouri Pacific mines to Dewey was increased 20 cents, making the rate to Dewey $1.40. On November 2, 1918, a provision was inserted in defendants' tariffs providing that where rates were made on combination the increases under General Order 28 should be applied to the combination rate in effect June 24, 1918. Under this provision the rate from Missouri Pacific mines to Dewey became $1.30. The rates from these mines to the gas-belt mills served by the Missouri Pacific are 80 cents. To mills in the gas belt on other lines combination rates of $1.30 apply.

The average distance from Missouri Pacific mines to Dewey is 85 miles; to the gas-belt mills served by that carrier, 95 miles. Of the total slack coal produced in 1916 on defendants' lines in the Pittsburg district the mines on the Missouri Pacific produced 41.56 per cent, on the Frisco 42.54 per cent, on the Santa Fe 7.57 per cent, and on the M., K. & T. 8.33 per cent. It was admitted by the Missouri

Pacific that in view of the advantages which would result from additional markets being opened up to complainant by the establishment of a reasonable joint rate to Dewey from mines on its line, such rate should be established.

Comparing the distances from Missouri Pacific mines to the gas-belt mills which it serves, and to Dewey, apparently no reason appears for a lower rate to the former than to the latter. However, we think, under present conditions, the comparison properly should be between the average distances via all lines to the gas-belt mills and to Dewey, respectively. The distances over the Missouri Pacific to the gas-belt mills are not representative, due to the disadvantage under which it operates, reaching only the outer edge of the southeastern gas-belt group over more or less indirect routes, while the other lines reach interior as well as border points over more or less direct routes.

We find that the combination rate from mines on the Missouri Pacific in the Pittsburg district to Dewey in connection with the M., K. & T. is, and for the future will be, unreasonable and unduly prejudicial to the extent that it exceeds or may exceed by more than 10 cents per net ton the rate contemporaneously maintained by the Missouri Pacific from the same mines to points served by it in the Kansas gas belt. The Missouri Pacific and the M., K. & T. will be required to establish through routes for the transportation of the traffic in question from mines on the Missouri Pacific in the Pittsburg district to Dewey and a joint rate applicable thereto which shall not exceed by more than 10 cents per net ton the rate contemporaneously maintained by the Missouri Pacific from the same mines to points served by it in the Kansas gas belt.

REPARATION.

Complainant's claims for reparation are based primarily on the ground that the rates to Dewey were unduly prejudicial to that point and unduly preferential of the gas-belt mills. The president of complainant company, who is also its general manager, testified that had the rates to the gas-belt mills been increased in the same measure as those to Dewey, no complaint would have been made, its interest being more in the relationship than in the measure of the rates themselves. He stated that its principal competition in the sale of cement is with the gas-belt mills. It requires about 200 pounds of coal to produce a barrel of 380 pounds of cement, and the difference of 15 cents per ton between the rates on coal to Dewey and to points in the gas belt amounted to 1.5 cents per barrel in the cost of the cement produced. These mills sell their cement delivered, the price being based on that made by Iola.

While complainant competes with mills other than those in the gas belt, it stated that in meeting this outside competition it looks to the Iola prices in the same manner as it does in meeting competition from the gas-belt mills, and that in order to market its product it was necessary to shrink its profits in the amount of the difference between the rate on coal from the Pittsburg district to the gas-belt mills and to Dewey. While it may be true that Iola and the other gas-belt mills fix the price in the surrounding territory, it was clearly shown that other cement mills, such as those at Mason City and Des Moines, Iowa, Kansas City, and St. Louis, Mo., controlled the price in more distant territories and the evidence does not indicate to what extent, if any, shipments of cement were made by complainant to points where the gas-belt mills controlled the price during the time a lower rate was in effect on coal to the gas-belt mills. We find that complainant has not shown that it was damaged by reason of the lower rates to the gas-belt mills.

An order in accordance with these findings will be entered.

No. 10285.

ILLINOIS GLASS COMPANY

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 4, 1919. Decided June 25, 1919.

Rate on glass soda bottles, in carloads, from Okmulgee, Okla., to Thibodaux, La., found unreasonable. Reparation awarded.

A. W. Sherwood and *J. B. Hayes* for complainant.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the manufacture of glass bottles at Alton, Ill., alleges by its complaint seasonably filed that the rate charged by the defendant carriers on a carload of glass soda bottles, shipped June 27, 1916, from Okmulgee, Okla., to Thibodaux, La., was unreasonable and unduly prejudicial. It asks for reparation and the establishment of a reasonable rate for the future. By supplemental complaint filed prior to the hearing the Director General of Railroads was made a party defendant. Throughout this report rates are stated in cents per 100 pounds.

Thibodaux is on a branch line of the Texas & Pacific Railway, 28 miles south of Donaldsonville, La. The shipment, weighing 36,700 pounds, moved over the St. Louis-San Francisco Railway to Hope, Ark., Louisiana & Arkansas Railway to Alexandria, La., and Texas & Pacific through Donaldsonville to destination, 685 miles. Charges were collected in the sum of $286.26, at a rate of 78 cents. A combination rate of 67 cents, composed of rates of 23 cents to Hope and 44 cents beyond, was applicable. The shipment was overcharged $40.37.

At the time of movement a joint fifth-class rate of 78 cents, governed by the western classification, applied from and to these points via Henryetta, Okla., and Denison, Tex., but not over the route of movement as the parties assumed. Contemporaneously a combination rate of 49 cents, composed of a commodity rate of 33 cents from Okmulgee to New Orleans and the fifth-class rate of 16 cents, governed by the western classification, back to Thibodaux, applied over

the route through Henryetta and Denison, under rule 5 (b) of Tariff Circular 18–A. Complainant contends that the applicable rate was unreasonable to the extent that it exceeded the Okmulgee-New Orleans rate of 33 cents, which also applied from Kansas City and St. Louis, Mo., to Thibodaux and from St. Louis to New Orleans. The Kansas City-Thibodaux rate did not apply via the route of movement as contended. The rate from Kansas City to New Orleans was 37 cents. As a result of General Order No. 28, filed by the Director General, the present rates from Kansas City and St. Louis to Thibodaux are 41.5 cents; from Okmulgee and St. Louis to New Orleans, 41.5 cents; and from Kansas City to New Orleans, 46.5 cents. On February 1, 1917, subsequent to the movement, the 33-cent rate from Okmulgee to New Orleans via Denison was made applicable from and to the same points via the route of movement. The latter rate in connection with the 16-cent rate from New Orleans to Thibodaux resulted in a combination rate of 49 cents over the route of movement. On April 15, 1919, a joint rate of 61.5 cents was established from Okmulgee to Thibodaux which equaled the combination on New Orleans, then and now in effect, of 41.5 cents from Okmulgee to New Orleans and 20 cents beyond, the factors mentioned having been increased under said General Order No. 28.

Defendants assert that the St. Louis-New Orleans rate is depressed below a normal basis by water competition and that the rate from Oklahoma points to New Orleans was made the same as from St. Louis to enable manufacturers at those points to meet the competition of manufacturers in St. Louis territory. They insist that the proper basis to Thibodaux and to other interior Louisiana territory is the combination on New Orleans. At the hearing defendants proposed a readjustment of the rates, and, observing the New Orleans combination in each instance, to establish rates of 61.5 cents to Thibodaux from Okmulgee, Kansas City, and St. Louis. As shown above the rate from Okmulgee to Thibodaux has been so adjusted.

Defendants seek to justify the reasonableness of the rate assailed by comparison with the fifth-class rate of 80 cents prescribed in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, for a two-line haul of over 650 miles and not exceeding 700 miles east of the Mississippi River, where the general scale of rates is lower than west of the river. But no particular weight attaches to this comparison, as the rate to New Orleans, the principal component in the subsequently established combination rate from and to these points, was a commodity rate. They also show that the ton-mile earnings of approximately 18 mills under the 61.5-cent rate are lower than the ton-mile earnings under existing rates from Okmulgee to a number of

Louisiana points, materially lower than the earnings under existing rates from Okmulgee to various Texas points, and lower than the earnings under rates in effect when the shipment moved from Okmulgee to some Louisiana points.

We find that the rate legally applicable was unreasonable to the extent that it exceeded the combination rate of 49 cents per 100 pounds, based on New Orleans, subsequently established over the route of movement. We further find that complainant made the above-described shipment and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation in the sum of $106.43, with interest.

As the basis of rates herein found reasonable is still in effect, save for the increases under General Order No. 28, which are not attacked, no order for the future is necessary.

An order awarding reparation will be entered.

No. 9954.

C. F. SAUER COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 10, 1919. Decided July 7, 1919.

The southern classification rating on flavoring extracts in glass bottles packed in wooden cases, and in bulk in wooden barrels, not found to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

T. C. Crouch and *R. E. Cabell* for complainant.

Frank W. Gwathmey for defendant carriers.

Alex. M. Bull for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

The complaint, filed September 27, 1917, alleges that the southern classification rating of first class on liquid extracts, not otherwise indexed by name, which includes flavoring extracts, in glass or earthenware, packed in barrels or boxes; in metal cans in barrels or boxes; and in bulk in barrels, any quantity, was and is unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded and exceeds third class, minimum 24,000 pounds, on flavoring extracts in glass bottles, packed in wooden boxes, or in bulk in wooden barrels, half barrels, or kegs, in carloads, and second class on the same commodity in bulk in wooden barrels, half barrels, or kegs, in less than carloads, the ratings provided in the official and western classifications. Complainant asks for reparation on specified shipments within the statutory period from Richmond, Va., to certain interstate destinations and for just and reasonable ratings for the future. After the hearing complaint was amended to make the Director General of Railroads a party defendant. Upon request of complainant further hearing was had but no additional evidence was submitted.

Complainant manufactures numerous varieties of extracts, which are highly concentrated and used for flavoring food. It distributes from 60 to 70 per cent of its products throughout southern classification territory and the remainder in official and western classification

territories. The larger part of complainant's output is shipped in bottles of various sizes, packed in boxes, and is used in the household. The smallest and most popular size contains 6 drams. Each bottle of extract is inclosed in a pasteboard container. The smaller individual packages are packed in pasteboard boxes and the larger in wooden boxes, which, in turn, are packed in substantial wooden shipping cases lined with excelsior.

The loaded shipping cases weigh from 20 to 225 pounds each and from 16 to 40 pounds per cubic foot. The minimum of 24,000 pounds provided in the official and western classifications and asked for by complainant is based upon commercial loading, the physical loading being much greater. The weight of 17 "large or carload" shipments made by the complainant during the period from March 7 to September 21, 1917, ranged from 12,655 to 32,970 pounds, the average being 22,778 pounds. The average value per pound of shipping weight for all sizes of the bottled extracts, which is the same for all varieties, was stated to be 33 or 34 cents, resulting in a value of approximately $8,000 for a carload weighing 24,000 pounds. The complainant's loss-and-damage claims are negligible.

The comparison with the ratings in the official and western classifications is unsupported by evidence showing the circumstances and conditions under which those ratings were established and are maintained and does not establish the unreasonableness of the rating assailed. Likewise mere comparisons made by the complainant between various rates applicable under the southern classification and rates applicable under the official and western classifications for comparable or greater distances are of little, if any, value.

The complainant compares the rating assailed with the southern classification less-than-carload ratings of first or second class, and carload ratings of third, fourth, fifth, or sixth class, on candy, and on grape juice, malted milk, olives, pickles, and various acids, in glass, packed in wooden boxes; and with the southern classification rating of second class, any quantity, on coffee extract, in glass, packed in wooden boxes. The last-named commodity is apparently used both for flavoring purposes and as a substitute for coffee. Its value is the same as that of other flavoring extracts. The value of malted milk is stated to be 36 cents per pound of shipping weight. The defendant carriers' witness testified that these commodities are not properly comparable with flavoring extracts; that pickles and olives are foodstuffs, move in large volume, and the ratings thereon are related to the ratings on vegetables and dried, canned, or preserved fruits; that acids are used without dilution and move in considerable quantities; that malted milk is rated consistently with condensed milk, as is grape juice with preserved fruits; that the candy which

moves by freight is handled by jobbers and is of the cheap kind, the more expensive candy moving by express; and that, following a general practice, coffee extract is rated the same as coffee because it is a substitute therefor. Comparisons submitted by the defendant carriers with the ratings on articles of similar transportation characteristics tend to show that flavoring extracts are not inconsistently grouped in the classification.

Due to commercial conditions the great bulk of flavoring extracts moves in less-than-carload quantities. The complainant testified that it made 2 carload shipments in 1914, 2 in 1915, 11 in 1916, and 22 in 1917. Of the total, 14 were governed by the southern classification. Of the shipments in 1914, 1915, and 1916, 1 was consigned to a quartermaster in the United States Army, while of those in 1917, 14 were so consigned, and 3 others were in reality less than carloads, weighing 12,655, 14,510, and 16,951 pounds, respectively. The complainant is said to be one of the largest manufacturers of flavoring extracts in the United States, and there is no evidence that other manufacturers, of whom there are approximately 6,800, ship in carload quantities to any appreciable extent. The complainant desires a lower carload rating, so that it may ship its product in carload lots to centrally located distributing agencies in the south and thence forward to jobbers in less than carloads. It contends also that a lower carload rating will act as an inducement to jobbers to lay in a year's supply at one time, and thus result in an increase in the carload shipments to jobbers direct, but various facts of record refute this contention. The complainant refers to the advantages to the carrier in carload over less-than-carload traffic due to reduction in loss-and-damage claims, economy in labor, and economy in the use of cars.

The defendant carriers take the position that a carload rating should not be required, because the normal movement is not in carloads. They maintain that the establishment of distributing agencies by the larger manufacturer would work to the disadvantage of the smaller manufacturer, and would further result in the building up of the larger jobbing centers in the south to the detriment of the smaller points. They refer to *Oriental Textile Mills* v. *A. & V. Ry. Co.*, 48 I. C. C., 31, in which the complainant's request for a carload rating on press cloth, based principally upon the desire to handle its products through distributing centers, was denied. They further maintain that the reduction in freight charges, amounting to a fraction of a cent per bottle, would be so small as not to benefit the consumer, but that it would result in a material loss of revenue to the carriers.

The complainant further contends that the rating on flavoring extract in bulk in barrels or kegs, in less than carloads, should be

lowered on general principles, and cites *Coca-Cola Co.* v. *A., T. & S. F. Ry. Co.*, 45 I. C. C., 461, wherein we found that the western classification rating on Coca-Cola sirup in less than carloads, increased from fourth class to second class, had not been justified as to shipments in bulk in barrels or kegs, for which we prescribed a rating of third class, but had been justified as to shipments in other containers, and wherein a witness for the defendants admitted that in the classification of liquids a lower rating is generally made on shipments in bulk in barrels than in glass, and that the risk in handling flavoring sirups in barrels as compared with handling in glass or earthenware justified a difference of one class in the rating. The complainant's shipments in bulk in wood comprise only a very small percentage of its total output and are in less-than-carload lots only. The extract so shipped is used by bakers, ice-cream manufacturers, bottlers, etc., and is of a different character from that shipped in glass. Its selling price is stated to be $1.75 per pound. The defendant carriers reply that while it is true that in some instances the classification rates articles in bulk in barrels lower than when in inner containers, it is not true that this is the fixed practice; that it may be said that the practice of carrying the same ratings is common in so far as articles possessing characteristics similar to those of the commodity under discussion are concerned; and that this is true, for instance, with respect to bay rum, liquid butter or cheese coloring, cocoa, confectioners' colorings, drugs or medicines, and dyes or colors. An examination of the classification, however, develops that cocoa and dyes or colors are rated lower when in bulk in wood than when in glass, packed in boxes or barrels.

The rating assailed has been in effect for at least 24 years and there have been only three or four requests upon the Southern Classification Committee for changes therein. For many years the commodity has moved freely thereunder, and during the past 10 years complainant's business has increased about 400 per cent.

It is not shown that other manufacturers of flavoring extracts in southern classification territory have any advantage in rating over complainant, nor is it shown that the difference between the ratings in the western and official classifications, on the one hand, and the southern, on the other, has unduly prejudiced complainant.

Upon the record presented herein we do not find that the rating assailed was or is unreasonable, unjustly discriminatory, or unduly prejudicial. An order dismissing the complaint will be entered.

No. 10052.

BEAVEN-JACKSON LUMBER & VENEER COMPANY

v.

BOSTON & MAINE RAILROAD ET AL.

Submitted December 4, 1918. Decided July 8, 1919.

Rates on carload shipments of yellow-pine box shooks from Evergreen, Ala., to Canastota, N. Y., Brattleboro and Essex Junction, Vt., and Highlandtown, Baltimore, Md., found unreasonable. Reparation denied. Complaint dismissed.

A. J. Ribe for complainant.

Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

In this complaint, seasonably filed, and as amended, reparation is sought on four carloads of yellow-pine box shooks shipped from Evergreen, Ala., to Canastota, N. Y., Brattleboro and Essex Junction, Vt., and Highlandtown, Baltimore, Md., in January and February, 1916, it being alleged that the rates charged were unreasonable to the extent that they exceeded those contemporaneously in effect on yellow-pine lumber and other articles taking the same rates and subsequently established on the articles shipped.

The details of the shipments are as follows:

Date.	Destination.	Weight.	Rate applied.	Charges Collected.
		Pounds.	*Cents.*	
Jan. 19, 1916	Canastota	42,800	39.2	$167.78
Feb. 1, 1916	Brattleboro	53,400	43.8	255.79
Feb. 4, 1916	Essex Junction	58,000	43.8	254.04
Feb. 16, 1916	Highlandtown, Baltimore	65,200	38.8	252.98

The legally applicable rates shown above were combinations made up of a rate of 21.5 cents to Cincinnati, Ohio, and rates of 17.7, 22.3, and 17.3 cents from Cincinnati to the respective destinations. Contemporaneously defendants, over whose lines the shipments moved, had in effect on yellow-pine lumber, in carloads, from Evergreen, joint through rates of 32 cents to Canastota, 34 cents to Brattleboro and Essex Junction, and 28 cents to Highlandtown, Baltimore, and on September 5, 1916, these rates were made applicable on yellow-pine

box shooks. We have repeatedly held that it is unreasonable to charge higher rates on box shooks than on lumber of the kind from which the shooks are manufactured. Defendants did not attempt to justify the rates assailed but relied on the fact, hereinafter stated, that complainant did not bear the freight charges.

The shipments were sold by complainant, the producer at Evergreen, to the Central Box & Package Company, of Omaha, Nebr., at whose direction complainant shipped them to consignees at the destinations named. It was testified that the freight charges were paid in the first instance by the consignees, but were deducted from the invoices in the settlements between the consignees and the Central Box & Package Company. Complainant's witness stated that it had guaranteed the Central Box & Package Company that the rate would not exceed that on lumber, but he was very positive that complainant had not paid the freight charges to the Central Box & Package Company. He also stated that any reparation awarded to complainant would be turned over to the Central Box & Package Company.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously maintained by defendants on yellow-pine lumber, in carloads, from Evergreen to the same destinations. We further find that as complainant did not bear the charges for the transportation it is not entitled to an award of reparation. The complaint will accordingly be dismissed.

No. 10086.

TULL & GIBBS

v.

NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted December 5, 1918. Decided July 7, 1919.

Charges on a shipment of furniture from Martinsville, Va., to Spokane, Wash., found unreasonable to the extent indicated. Reparation awarded.

M. J. Luby for complainant.

A. C. Spencer for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation, alleges that the charges collected on a shipment of furniture forwarded from Martinsville, Va., to Spokane, Wash., in October, 1914, were unreasonable and unduly prejudicial and asks for reparation. Throughout this report rates are stated in amounts per 100 pounds.

The shipment consisted of dressers and chiffoniers, invoice value $20 each, for which a 50-foot car was ordered. No car of that size was available at the time and two 36-foot cars were furnished and used. Notations to this effect appear on the expense bill and bill of lading. One car contained 9,700 pounds and the other 6,900 pounds. The dunnage weighed 670 pounds, for 500 of which there was free allowance. The shipment moved as routed over defendants' lines by way of Memphis, Tenn., and charges aggregating $402.56 were collected, based on a rate of 66 cents applied to a minimum weight of 21,600 pounds to Cairo, and a rate of $1.30 and a minimum weight of 20,000 pounds beyond.

At the time of movement a joint rate of $1.63, minimum 20,000 pounds, applied from Martinsville to Spokane over the route of movement on furniture of the kind shipped. The 20,000 pounds minimum applied to cars of all sizes, but there was no "two-for-one" rule in connection with this rate. The charges on the two cars at this rate and minimum weight would have been $652. Defendants' tariffs provided for the application through any Mississippi River gateway of the lowest combination through any gateway if it resulted in a lower charge than the joint rate. The lowest combination was composed of rates of 66 cents from Martinsville to Cairo, with minima

graduated from 12,000 pounds for cars 36 feet 6 inches and under in length to 21,600 pounds for 50-foot cars, and $1.30 from Cairo to destination with a minimum of 20,000 pounds for a car of any size. Two-for-one rules were in effect in connection with each of these rates, but it was provided that the two cars should be used on the basis of the minimum prescribed for the cars ordered. The charges collected were legally applicable.

On behalf of complainant it was testified that the entire shipment could have been loaded into the 50-foot car ordered and that had such a car been furnished or a two-for-one rule applied in connection with the $1.63 rate the charges would have been $326. Reparation is sought on this basis. Generally the minimum on this kind of furniture is 12,000 pounds for a 36-foot car. The proposed consolidated classification provides for graduated minima ranging from 12,000 pounds for cars 36 feet 6 inches in length to 19,440 pounds for cars 50 feet 6 inches in length. Complainant observes that at the time of movement defendants maintained the two-for-one rule in connection with commodity rates on furniture with a flat minimum applicable to a car of any size, from southeastern points, including Martinsville, to Pacific coast terminals, as well as from all groups west of Chicago to Spokane.

Where there is a uniform minimum for cars of all lengths, as in this case, the carrier is not required to furnish a car of any specified length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. The record is clear that it would have been physically impossible to load this shipment into a 36-foot car.

We find that the charges assessed were unreasonable to the extent that they exceeded charges based on the rate of $1.63 and minimum weight of 20,000 pounds which would have applied had defendants furnished a proper sized car. We further find that complainant paid and bore the charges herein found unreasonable; that it has been damaged in the amount of the difference between the charges paid and those found reasonable, and that it is entitled to reparation in the sum of $76.56, with interest. The Director General has not been made a defendant and no order for the future will be entered.

No. 10257.

ORANGE RICE MILLING COMPANY
v.
DIRECTOR GENERAL, TEXAS & NEW ORLEANS RAILROAD COMPANY, ET AL.

Submitted March 5, 1919. Decided June 21, 1919.

Rate charged on two carloads of rice bran from Iota and Welsh, La., to Childress, Tex., found unreasonable to the extent that it exceeded or may exceed the aggregate of the intermediate rates subject to the act to regulate commerce contemporaneously in effect over the route of movement. Reparation awarded and reasonable maximum rate prescribed.

H. S. L'Hommedieu for complainant.

H. M. Garwood and *E. H. Thornton* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in rice milling at Orange, Tex. By complaint seasonably filed it alleges that the rate charged on two carloads of rice bran shipped from Iota and Welsh, La., to Childress, Tex., November 30, 1917, and January 26, 1918, respectively, was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect over the route of movement. It asks for reparation and the establishment of a reasonable rate. Rates are stated throughout this report in cents per 100 pounds.

The shipments, weighing 40,000 and 50,052 pounds, respectively, moved over the Louisiana Western, the Texas & New Orleans, and the Houston & Texas Central railroads and the Fort Worth & Denver City Railway. Charges were collected on the Iota shipment in the sum of $292, and on the Welsh shipment in the sum of $365.38, plus war taxes, at the applicable joint class B rate of 73 cents, governed by the western classification. The intermediate rates contemporaneously in effect over the route of movement were commodity rates of 25.5 cents, from Iota and Welsh to Quanah, Tex., and an interstate distance commodity rate of 5 cents beyond, a total of 30.5 cents. This departure from the provisions of the fourth section was and is protected by an appropriate fourth section application,

which was not heard with this case. On June 25, 1918, the 73-cent rate was increased to 91.5 cents and the combination on Quanah was increased to 38.5 cents, pursuant to General Order No. 28 of the Director General of Railroads.

Defendants' witness testified that there was practically no movement of rice bran, in carloads, to Childress prior to November, 1917, and that there had been no demand for the establishment of commodity rates.

Complainant is not a party to the transportation records in connection with the Iota shipment but stated that the shipment was made for its account, that it is the real party in interest, and that it paid and bore the charges.

We find that the rate assailed was unreasonable to the extent that it exceeded 30.5 cents per 100 pounds and that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed the aggregate of the intermediate rates subject to the act to regulate commerce contemporaneously in effect over the route of movement; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $382.72, with interest.

Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

An appropriate order will be entered.

No. 10379.

DIETZ LUMBER COMPANY

v.

DIRECTOR GENERAL, MONROE & TEXAS RAILROAD COMPANY, ET AL.

Submitted March 22, 1919. Decided June 21, 1919.

Rate on two carloads of yellow-pine lumber from Lenwil, La., to Ash Grove, Kans., found to have been unreasonable. Reparation awarded.

C. E. Childe and *P. P. Murray* for complainant.

James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the lumber business at Omaha, Nebr., alleges by complaint filed November 14, 1918, as amended, that unreasonable charges were collected on two carloads of yellow-pine lumber shipped November 18 and December 9, 1916, from Lenwil, La., to Ash Grove, Kans., and asks for reparation. Rates are stated throughout this report in cents per 100 pounds.

Ash Grove is a local station on the Salina Northern Railroad, 49 miles north of Salina, Kans. The Salina Northern extends from Salina, where it connects with the Union Pacific and the Missouri Pacific railroads, and the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific railways, to Osborne, Kans., where it connects with a branch line of the Missouri Pacific Railroad, a total distance of 81 miles. The shipments moved over the Monroe & Texas Railroad to Alpena, La., Vicksburg, Shreveport & Pacific Railroad to Monroe, La., St. Louis, Iron Mountain & Southern and Missouri Pacific railways, now the Missouri Pacific Railroad, to Salina, and Salina Northern beyond. They aggregated 106,700 pounds on which charges were collected in the sum of $407.87 exclusive of war tax. The rate legally applicable was 38 cents, composed of a joint commodity rate of 28.5 cents to Salina and a local distance-commodity rate of 9.5 cents beyond. The shipments were overcharged $2.41.

Joint rates on lumber from Lenwil were first established to points on the Salina Northern as far north of Salina as Lincoln Center, Kans., a distance of 35 miles and embracing six stations, on October 5, 1915, upon the completion of that portion of the railroad. These rates were graded from the 28.5-cent rate to Salina to 33 cents at Lincoln Center, which is a junction point with the Union Pacific, and to which point in connection with the Union Pacific, a rate of 33 cents was already in effect from Lenwil. The Salina Northern was not completed through Ash Grove to Osborne until the fall of 1916, and on October 23, 1916, the question of establishing rates to the remaining points on that line was taken up with the various southwestern carriers. Effective December 20, 1916, on short notice, the 33-cent rate was also established on lumber from Lenwil to all points on the Salina Northern north of Lincoln Center, including Ash Grove.

Complainant shows that at the time the shipments moved a rate of 33 cents upon the basis of which it asks reparation, applied on this traffic from Lenwil to points on other lines in the same general territory as Ash Grove, including Osborne on the Missouri Pacific, for distances ranging from 756 to 1,053 miles, with ton-mile earnings ranging from 6.3 to 8.7 mills. The 38-cent rate applicable to Ash Grove, 847 miles over the route of movement, earned about 9 mills per ton-mile; the 33-cent rate would have earned about 7.8 mills per ton-mile. Complainant also cites rates of 5.5 cents applying for a distance of 60 miles over the Missouri Pacific on traffic moving wholly within the state of Kansas and also on traffic moving within the state of Kansas which originated at or was destined to a point outside of that state. This scale of rates was also in force on the Salina Northern on intrastate business when the shipments moved. Had it applied on traffic originating outside of the state of Kansas, the Salina combination would have been 34 cents.

Defendants testify that it was necessary to correspond with about fifty interested carriers, exclusive of tap lines, before any joint rate could be established to Ash Grove and other points on the new extension of the Salina Northern north of Lincoln Center; that the supplement to agent Leland's tariff naming the subsequently established 33-cent rate to Ash Grove was compiled prior to the movement of the last shipment and bears an issuing date of December 9, 1916, but that it was impossible to have the publication printed, bound, and distributed to become effective prior to December 20, 1916. They point out that the 38-cent rate was applicable from and to the points in question over various other routes for distances ranging from 856 to 1,088 miles, and state that but for the long-and-short-haul rule of the fourth section Ash Grove would not have been accorded the

33-cent rate; also that Lenwil is in the northern part of a large group of lumber-producing points taking the same rate to Ash Grove and that the average distance from this group to Ash Grove is at least 150 miles greater than from Lenwil.

The 33-cent rate subsequently established remained in effect until June 25, 1918, when it was increased pursuant to General Order No. 28 issued by the Director General of Railroads.

We find that the rate applicable was unreasonable to the extent that it exceeded 33 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon in excess of those that would have accrued on the basis herein found reasonable; that it has been damaged in the amount of such charges and is entitled to reparation in the sum of $55.76, with interest.

An appropriate order will be entered.

No. 10288.

EQUITABLE POWDER MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ET AL.

Submitted April 11, 1919. Decided July 2, 1919.

Rate on imported nitrate of soda, in carloads, from New Orleans, La., and Pensacola, Fla., to Fenn, Ark., not found unreasonable, but found unduly prejudicial as compared with the rates from the same points of origin to Joplin, Carl Junction, and Atlas, Mo., and Turck and Pittsburg, Kans. Undue prejudice ordered removed. Reparation denied.

J. L. Donnelly for complainant.
C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

By its complaint filed October 19, 1918, as amended, complainant, a corporation operating a powder mill at Fenn, Ark., alleges that the defendants' rate on nitrate of soda, in carloads, imported from Chile, from New Orleans, La., and Pensacola, Fla., to Fenn, was and is unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rate on like traffic from the same points of origin to more distant points in Kansas and Missouri, and in violation of the long-and-short-haul rule of the fourth section. It asks reparation on numerous shipments moving subsequent to August 2, 1917, and the establishment of a reasonable and nonprejudicial rate for the future. At the hearing complainant sought to amend the complaint to allege specifically a violation of section 1, to which amendment defendants objected, urging that the complaint was not sufficient to place them on notice of such an issue. The objection is not sustained. Rates are stated hereinafter in amounts per 100 pounds, and, except as otherwise noted, are those in effect prior to June 25, 1918, on which date they were increased pursuant to General Order No. 28 of the Director General of Railroads.

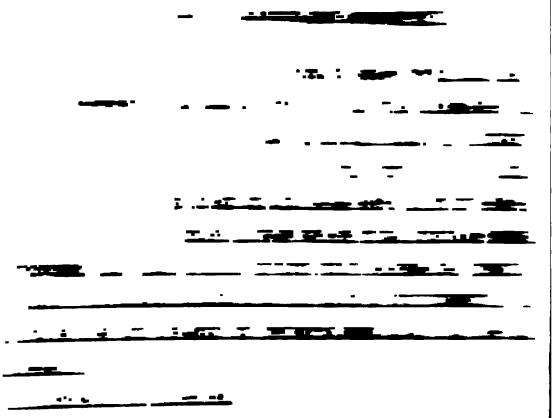
Fenn is a local point on the St. Louis-San Francisco Railway, hereinafter styled the Frisco, 5 miles south of Fort Smith, Ark., and on this traffic takes the Fort Smith rates. Competitive powder mills

referred to by complainant are located at Joplin, Carl Junction, and Atlas, Mo., and Turck and Pittsburg, Kans.

Nitrate of soda, imported from Chile, is the principal ingredient used by complainant and its competitors in the so-called Joplin district in the manufacture of black powder. Effective November 15, 1909, rates of 27 and 29 cents, minimum 50,000 pounds (except where marked capacity of car is less, in which event the marked capacity will govern), were established on this traffic from New Orleans to Fort Smith and Fenn and from Pensacola to Joplin, respectively. Subsequently the Joplin rate was increased to 30 cents and extended to the other competitive points, and effective March 1, 1913, the rate to Fort Smith was increased to 28 cents. The relative adjustment remained unchanged until April, 1917, when with no change in the rate to Fort Smith or Fenn the rate to each of the competitive points was reduced to 20 cents, minimum 60,000 pounds. The present rates are 25 cents to those points and 35 cents to Fenn and Fort Smith, representing increases pursuant to General Order No. 28.

These rates apply over numerous routes. The short route from New Orleans to Fort Smith and Fenn is by way of the Louisiana Railway & Navigation Company, Shreveport, La., and the Kansas City Southern Railway by way of Spiro, Okla., 573 miles to Fort Smith, and 578 miles to Fenn by way of the Frisco beyond Fort Smith. The short route from New Orleans to Joplin, which does not differ materially in distance from the short routes to the other grouped points, is by way of the Louisiana Railway & Navigation Company to Shreveport and the Kansas City Southern beyond, 712 miles. Traffic over this route does not move through Fort Smith or Fenn but passes through Spiro, 17 miles west of Fort Smith. The shortest route from New Orleans to Joplin via which traffic would move through Fenn and Fort Smith is by way of the Louisiana Railway & Navigation Company to Alexandria, La., Louisiana & Arkansas Railway to Hope, Ark., and the Frisco beyond, 825 miles. In connection with the Frisco there are also other available routes via which the traffic could move from New Orleans to Joplin through Fort Smith and in some instances also through Fenn. Available routes from Pensacola to Joplin pass through Fort Smith but not through Fenn. The maintenance of higher rates on this traffic to Fenn or to Fort Smith than to more distant points on the same route is not protected by any fourth section application or authorized by us and is therefore unlawful.

Complainant contends that as the 20-cent rate was voluntarily established by the carriers to these more distant points, and, save for the increase pursuant to General Order No. 28, has been continued



Pensacola during congestion at the New Orleans port. But a considerable portion of its shipments moved from Pensacola.

The record contains citations of various rates from New Orleans to Fort Smith and Joplin, including those on certain low-grade traffic, such as asphalt, which rates are in each instance higher than the rate on nitrate of soda from New Orleans to Joplin. While the class rates from New Orleans are lower to Fort Smith than to certain of these competitive points and the first-class rate to Fort Smith and Joplin is the same, the Kansas City basis applies on all classes to Joplin, the respective fifth-class rates being 38 cents to Joplin and 44 cents to Fort Smith.

The gravamen of the complaint is the unduly prejudicial relation of the rates which defendants admit should be corrected. With a view to effecting a proper adjustment and bringing the rates into conformity with the fourth section requirement of the act, defendants now propose to reestablish the former relation by increasing the rates to the Joplin group. However, relying on *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S., 184, and other cases, they contend that complainant has failed to prove that it was damaged by reason of the adjustment and challenge its right to reparation.

Complainant testified that approximately 18.5 pounds of nitrate of soda are used in the manufacture of each 25-pound keg of powder; that the differentials of 8 and 10 cents formerly and at present maintained to Fenn over the Joplin group rate represent respectively a manufacturing cost to it of approximately 1.5 and 1.85 cents per keg in excess of the manufacturing cost to which its competitors were subject. Complainant does not claim to have lost any business by reason of the adjustment, but, based on its production of powder during the years 1917 and 1918, it estimates that it has been damaged during that period in the sum of $7,970. While this increased manufacturing cost "is submitted only as evidence of its loss and not as a measure of damage," it contends that "the measure of its damages * * * is the difference between the two rates." Certain other testimony of a general nature is offered with respect to the competition met in disposing of its finished product, but it is impossible to determine with certainty how much of complainant's damage, if any, was attributable to the preferential rate adjustment and how much to the legitimate advantage of its competitors.

We find that the defendants have justified the reasonableness of the rate assailed in effect prior to June 25, 1918. As to the present rate, the President's certificate as to the need of revenue stands uncontroverted. We further find that the rate assailed was, prior to June 25, 1918, unduly prejudicial to Fenn to the extent that it

exceeded a rate at least 2 cents per 100 pounds lower than the rate contemporaneously maintained on like traffic from the same points of origin to Joplin, Carl Junction, Atlas, Turck, and Pittsburg, and that the present rate is, and for the future will be, unduly prejudicial to Fenn to the extent that it exceeds or may exceed a rate at least 2.5 cents per 100 pounds lower than the rate contemporaneously maintained on like traffic from the same points of origin to Joplin, Carl Junction, Atlas, Turck, and Pittsburg. The record affords no basis for an award of reparation, and the claim thereto will be denied.

An appropriate order will be entered.

No. 10382.

PARTRIDGE LUMBER COMPANY

v.

DIRECTOR GENERAL, CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, ET AL.

Submitted June 6, 1919. Decided June 21, 1919.

Rate on sawdust, in carloads, from Minneapolis, Minn., to Cherokee, Iowa, found unreasonable to the extent that it exceeded and exceeds the aggregate of the intermediate rates, subject to the act to regulate commerce, contemporaneously in effect over the route of movement. Reparation awarded.

Norman E. Boucher for complainant.

R. L. Kennedy for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Minneapolis, Minn. By complaint seasonably filed it alleges that the rate charged by defendants on two carloads of sawdust shipped February 14, and 24, 1917, from Minneapolis to Cherokee, Iowa, was unreasonable and in violation of the fourth section in that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Sheldon, Iowa. Unjust discrimination and undue prejudice were also alleged, but these allegations were not sufficiently developed of record and will not be considered. Complainant asks for reparation and the establishment of a reasonable rate.

The shipments, aggregating 80,500 pounds, moved over the Chicago, St. Paul, Minneapolis & Omaha Railway to Sheldon, and the Illinois Central Railroad beyond. Charges were collected in the sum of $104.65 at the legally applicable joint class E rate of 13 cents per 100 pounds. The intermediate rates contemporaneously in effect on sawdust, in carloads, were the class E rate of 7.5 cents per 100 pounds from Minneapolis to Sheldon, and the Iowa distance tariff rate of 3.8 cents per 100 pounds, applicable to interstate traffic, beyond. This departure from the rule of the fourth section was protected by an appropriate application which was heard in another proceeding now pending.

The tariff naming the Iowa distance rate contained the following restrictive clause:

> Rates shown herein may be used only when no other rates apply. When governed by classification which also contains distance rates, they will take precedence over the distance rates in such classification. They may not be used either by themselves or in combination in preference to any specific tariff rate.

Defendants' sole contention is that this clause rendered the Iowa distance rates inapplicable to this traffic. This contention, however, is concluded by our finding in *Herrick Refrigerator & Cold Storage Co.* v. *C. G. W. R. R. Co.*, 46 I. C. C., 421.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the aggregate of the intermediate rates subject to the act to regulate commerce contemporaneously in effect to and from Sheldon; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $13.68, with interest.

An appropriate order will be entered.

No. 10385.

REFINITE COMPANY

v.

DIRECTOR GENERAL AND CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted March 27, 1919. Decided June 25, 1919.

Rate on crude clay, in carloads, from Buffalo Gap, S. Dak., to Des Moines, Iowa, found to have been unreasonable. Reparation awarded.

C. E. Childe for complainant.

A. S. Brooks for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the manufacture of clay products at Omaha, Nebr., as successor in interest to the Des Moines Refining Company, seeks reparation, alleging by complaint filed January 2, 1919, that the rate charged by the Chicago & North Western Railway Company, hereinafter called the North Western, on four carloads of crude clay shipped from Buffalo Gap, S. Dak., to Des Moines, Iowa, January 28, February 8, and March 6, 1917, was unreasonable to the extent that it exceeded 22 cents per 100 pounds, the rate subsequently established. Unless otherwise indicated, rates hereinafter mentioned are in cents per 100 pounds.

The shipments, weighing 87,500, 67,100, 78,600, and 86,100 pounds, moved over the North Western through Blair, Nebr., a distance of 671 miles. Charges aggregating $925.97 were collected at the applicable class E rate of 29 cents, minimum 40,000 pounds, governed by the western classification. On March 8, 1917, subsequent to the movement, the North Western established a commodity rate of 22 cents, minimum 80,000 pounds, from and to these points. The earnings under the rate charged were 8.64 mills per ton-mile, and based on the loading, from 29 to 37.8 cents per car-mile; under the subsequently established rate, 6.56 mills per ton-mile and from 26.2 to 28.7 cents per car-mile.

At the time of movement the North Western maintained distance commodity rates of 19 cents on clay, stone, gravel, and sand, in carloads, for distances of 700 miles, between points in Illinois, Iowa,

Minnesota, North Dakota, and South Dakota on the one hand and points in Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and Michigan on the other; a class E distance rate of 23.3 cents for the same distance between points in Iowa and Nebraska and also between Iowa points and points in South Dakota on its Bonesteel branch; and a distance commodity rate of 22 cents on brick for 800-mile hauls between points in Iowa and South Dakota. Other comparisons offered by complainant show rates maintained by the North Western on soft coal, iron ore, and crude asbestos rock, ranging from $2.90 to $5 per net ton between various points in South Dakota, Nebraska, Wyoming, and Minnesota, for distances ranging from 528 to 862 miles, with ton-mile earnings of from 3.94 to 6.65 mills. The crude clay in question is said to possess no commercial value in the ground, but is valued at about 1 cent per pound aboard cars, which represents the digging and loading cost.

Defendants urge that the shipments passed through a sparsely settled territory, with varying grades; that the rate charged was not unreasonable; and that the reduction from 29 to 22 cents was the result of complainant's urgent solicitation. They observe that we have prescribed rates of 28 cents on clay, in carloads, for distances of from 400 to 600 miles from Shreveport, La., to Texas points, from Oklahoma to Texas points, and from Minneapolis, Minn., to North and South Dakota points; also rates of 33 cents for hauls of 365 miles from Houston, Tex., to Louisiana, and for hauls of 500 miles from Memphis, Tenn., to Arkansas and Louisiana. On June 25, 1918, pursuant to General Order No. 28, issued by the Director General of Railroads, the 22-cent rate was increased to 27.5 cents, the present rate.

We find that the rate assailed was unreasonable to the extent that it exceeded the subsequently established rate of 22 cents per 100 pounds, minimum 80,000 pounds; that the Des Moines Refining Company made the shipments as described; that it paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that complainant, or other lawful successor in interest to the Des Moines Refining Company, is entitled to reparation in the sum of $192.05, with interest.

An appropriate order will be entered.

No. 10412.

REYNOLDS TOBACCO COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 17, 1919. Decided June 21, 1919.

Charges on certain carloads of tin foil from New York, N. Y., to Winston-Salem, N. C., found unreasonable. Reparation awarded.

J. L. Graham and *S. Clay Williams* for complainant.
Burton Craige for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of tobacco and cigarettes at Winston-Salem, N. C. By complaint seasonably filed it alleges that the rate of 83 cents per 100 pounds charged by defendants on 31 carloads of tin foil shipped from New York, N. Y., to Winston-Salem, between July 11 and November 28, 1917, was unreasonable and unduly prejudicial to the extent that it exceeded a rate of 55 cents subsequently established. It asks for reparation only. Rates are stated in this report in cents per 100 pounds.

The shipments, each of which weighed more than 30,000 pounds, aggregated 1,667,733 pounds. They moved via the Pennsylvania Railroad to Harrisburg, Pa., Cumberland Valley Railroad to Hagerstown, Md., and Norfolk & Western Railway beyond, and charges were collected thereon in the sum of $13,842.17 at the second-class rate of 83 cents, any quantity, applicable under the governing southern classification. Contemporaneously the official and western classifications rated tin foil, in carloads, fourth class.

Prior to July 11, 1917, complainant's shipments moved via a water-and-rail route comprising the line of the Old Dominion Steamship Company to Norfolk and various rail carriers beyond, including the Norfolk & Western, at a commodity rate of 47 cents, which was the same as the fourth-class rate via that route. Complainant testified that embargoes growing out of labor troubles at New York and Norfolk necessitated the forwarding of these shipments all rail; and it appears that, upon discovering that no commodity rate applied all rail, complainant immediately requested the

carriers to establish an all-rail commodity rate of 55 cents, or the fourth-class differential of 8 cents higher than the water-and-rail rate which, it was testified, is in accordance with the usual basis for constructing all-rail commodity rates into this territory. While the carriers did not establish the specific commodity rate requested by complainant, they effected the same result by amending the exceptions to the southern classification on January 10, 1918, to provide fourth-class rating, minimum 30,000 pounds, on tin foil, in carloads, destined to Carolina territory. The movement of tin foil, in carloads, into southern classification territory south of Richmond, Va., is said to be confined to a few points in the Carolinas.

At the time of movement an all-rail commodity rate of 28 cents, minimum 30,000 pounds, applied on tin foil, in carloads, from New York to Richmond, at which latter point competitors of complainant are located.

Defendants stated at the hearing that they were willing to make reparation on the basis of the subsequently established rate. The consignor prepaid the freight charges, but the charges in excess of those accruing on basis of 47 cents per 100 pounds were ultimately borne by complainant, the consignee.

We find that the transportation charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 55 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $4,669.64, with interest.

War taxes in excess of those which would have accrued on the basis of the rate found reasonable were collected on some of the shipments. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

An order awarding reparation will be entered.

No. 9823.

NATIONAL REFINING COMPANY ET AL.

v.

MISSOURI PACIFIC RAILROAD COMPANY.

Submitted March 1, 1919. Decided July 3, 1919.

Rate on petroleum and its products, in carloads, from Coffeyville, Kans., to Little Rock, Ark., not shown to have been unreasonable. Complainants not shown to have been damaged by alleged undue prejudice, or by the maintenance of a lower rate from Ponca City, Okla., a farther distant point. Complaint dismissed.

C. D. Chamberlin and *F. W. Boltz* for complainants.
Henry G. Herbel and *Fred G. Wright* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

BY DIVISION 3:

By complaint filed August 15, 1917, complainants allege that the rate of 23 cents per 100 pounds on petroleum and its products, in tank-car loads, from Coffeyville, Kans., to Little Rock, Ark., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the act. They pray for reparation on shipments within the statutory period and the establishment of a reasonable rate for the future. In this report rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918, on which date they were increased pursuant to General Order No. 28 issued by the Director General of Railroads. The increased rates are not in issue and the Director General is not a party defendant.

There was heard with this case defendant's Fifteenth Section Application No. 1777, filed subsequent to this complaint, in which authority was sought to establish an additional rate group extending from Joplin, Mo., and Coffeyville on the east to Arkansas City, Kans., and Ponca City, Okla., on the west, with a reduction in the Coffeyville-Little Rock rate on this traffic, among others, from 23 to 21 cents; and an increase in the rate from Ponca City from 19 to 21 cents. On March 1, 1919, this application was withdrawn at the instance of the Director General of Railroads. The rate of 19 cents from Ponca City was applicable by way of Coffeyville and the route of movement. The maintenance of a higher rate on this traffic from

Coffeyville than from Ponca City, a farther distant point, was not and is not protected by any fourth section application or authorized by us, and was and is unlawful.

In support of their contention that the rate assailed was unreasonable, complainants cited lower rates from Coffeyville to Lincoln, Nebr., and Wood River, Ill.; from Muskogee, Okla., to Atchison, Kans.; and from Coffeyville, Wood River, Whiting, Ind., and Baton Rouge, La., to Memphis, Tenn., but introduced no evidence tending to show the relative transportation conditions as between the rates cited and the rate assailed. Defendant's evidence was directed almost exclusively to the above-mentioned fifteenth section application.

In *Merchants Freight Bureau* v. *M. P. Ry. Co.*, 21 I. C. C., 573, we prescribed a rate not in excess of 23 cents on petroleum and its products from Coffeyville to Little Rock.

We find that the rate assailed is not shown to have been unreasonable. The record contains no proof of damage resulting from the alleged undue prejudice or from the fact that a lower rate was in effect from Ponca City, a farther distant point. Following *Appalachia Lumber Co.* v. *L. & N. R. R. Co.*, 25 I. C. C., 193, and *Iten Biscuit Co.* v. *C., B. & Q. R. R. Co.*, 50 I. C. C., 724, 53 I. C. C. 729, reparation is denied. An order dismissing the complaint will be entered.

MEYER, *Commissioner*, dissenting in part:

To the extent to which this case follows the principle announced in *Iten Biscuit Co.* v. *C., B. & Q. R. R. Co.*, 53 I. C. C. 729, I dissent from the conclusions of the majority for the reasons indicated in my dissent therein.

No. 10246.

HERMAN GROSS

v.

DIRECTOR GENERAL, ERIE RAILROAD COMPANY, ET AL.

Submitted February 4, 1919. Decided June 21, 1919.

Carload of soda ash from Barberton, Ohio, to Shinglehouse, Pa., found to have been misrouted. Reparation awarded.

Charles C. Van De Boe for complainant.

G. R. James for Director General of Railroads.

Charles H. Hammond for Pittsburg, Shawmut & Northern Railroad Company.

G. M. Beasor for New York & Pennsylvania Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is engaged in manufacturing glass bottles at Shinglehouse, Pa., under the name of Puritan Glass Company. By complaint filed August 31, 1918, he alleges that the rate of 16.6 cents per 100 pounds charged by the defendant carriers on a carload of soda ash shipped December 11, 1917, from Barberton, Ohio, to Shinglehouse, was unjust and unreasonable to the extent that it exceeded 11.6 cents, and asks for reparation. Rates are stated in cents per 100 pounds.

The shipment, weighing 92,900 pounds, moved over the Erie Railroad to Friendship, N. Y., Pittsburg, Shawmut & Northern Railroad to Ceres, N. Y., and New York & Pennsylvania Railway beyond. Transportation charges were collected in the sum of $154.21 at a rate of 16.6 cents, applicable under rule 5(b) of Tariff Circular 18–A, based on a rate of 11.6 cents from Barberton through Ceres to Prosser, N. Y., and 5 cents beyond, plus a war tax of $4.63.

The consignor originally billed the shipment "Puritan Glass Co., Destination Shinglehouse, State of Pa., Route, Erie, B. & S., N. Y. & P.," and inserted in the bill of lading a rate of 11.6 cents. Prior to the movement the bill of lading was changed by inserting "Ceres, N. Y.," after "Puritan Glass Co.," and by substituting "P. S. & N.," for "B. & S."

Defendants offered in evidence an affidavit of the agent of the initial carrier in which it is stated that prior to the movement he advised the consignor that the shipment could not be accepted and the 11.6-cent rate protected over the route originally specified, and that the route through Canisteo, N. Y., over which the 11.6-cent rate applied, was embargoed; and that in accordance with the consignor's instructions he altered the bill of lading to read "Ceres, N. Y., notify Puritan Glass Co., Shinglehouse, Pa.," it being understood that the destination was intended to be changed from Shinglehouse to Ceres and that the rate of 11.6 cents, which was not eliminated from the billing, did not apply beyond Ceres. Complainant insists that the instructions were to route the shipment via Ceres to Shinglehouse. It is observed that "Ceres, N. Y." was not inserted in the bill of lading after "Destination," but on the line above "Destination Shinglehouse, State of Pa."; that the bill of lading did not contain instructions to notify Puritan Glass Company; and that the shipment moved under the corrected bill of lading through Ceres to Shinglehouse.

The 11.6-cent rate did not apply from Barberton to Shinglehouse over the route originally designated by the shipper, or, as above shown, over the route of movement, nor did it apply to Ceres over the route as corrected because the New York & Pennsylvania Railway would not participate in a movement to Ceres over that route. But this rate was applicable from Barberton to Shinglehouse over the Erie and Pennsylvania railroads to Olean, N. Y., Pittsburg, Shawmut & Northern to Ceres, and New York & Pennsylvania beyond. If the shipment had moved over this route the transportation charges would have been $107.76, and the war tax $3.23.

We find that the Erie Railroad Company misrouted the shipment; that the shipment was made as described; that complainant paid and bore the charges thereon and was damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued if the shipment had moved through Ceres by the route over which the 11.6-cent rate applied; and that he is entitled to reparation from the Erie Railroad Company in the sum of $46.45, with interest. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes, and we also hold that we may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate applicable via the route over which we find that the shipment should have moved. But this holding is not to be construed as interposing any obstacle to refund of the war tax on the overcharge in accordance with regulations promulgated by the Commissioner of Internal Revenue.

An appropriate order will be entered.

No. 10345.

MARFIELD GRAIN COMPANY

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted February 24, 1919. Decided June 21, 1919.

Two carloads of wheat from Shickley and Dorchester, Nebr. to Chicago, Ill., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak., found to have been overcharged and misrouted. Reparation awarded.

T. A. McGrath for complainant.

L. H. Lamb for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the grain business at Minneapolis, Minn., alleges by complaint filed November 30, 1918, that, by reason of misrouting, excessive charges were collected on two carloads of wheat shipped in July, 1918, from Dorchester and Shickley, Nebr., stored at Lincoln, Nebr., and forwarded thence to Aberdeen, S. Dak., to be milled in transit for Chicago, Ill. It seeks reparation only. Rates are stated in cents per 100 pounds.

The Central Granaries Company consigned the shipments from Dorchester and Shickley to Lincoln for storage, paying the applicable local rates. Thereafter it sold the wheat to complainant f. o. b. Lincoln, and the two shipments, weighing 82,860 and 80,920 pounds, respectively, were forwarded July 23, 1918, from Lincoln on order-notify bills of lading issued by the Chicago, Burlington & Quincy Railroad, hereinafter styled the Burlington. These bills of lading showed Dorchester and Shickley as the points of origin and Aberdeen as the destination and carried the notation "to be milled in transit for Chicago."

The shipments, which were unrouted, moved from Lincoln over the Burlington via Ashland, Nebr., to Sioux City, Iowa, thence over the Great Northern Railway via Willmar, Minn., to Aberdeen. The milled products moved from Aberdeen to Chicago via the Chicago, Milwaukee & St. Paul Railway, hereinafter termed the Milwaukee. The total rate charged for the transportation from Lincoln to Chicago was 69 cents, made up of the Willmar combination of 41.5 cents

from Lincoln to Aberdeen and a rate of 27.5 cents beyond. When the shipments moved defendants' tariffs named rates of 25.5 and 29.5 cents from Dorchester and Shickley, respectively, to Willmar, under which storage in transit was permitted at Lincoln, and a rate of 18 cents from Willmar to Aberdeen. The combination rates on Willmar of 43.5 cents from Dorchester and 47.5 cents from Shickley were applicable for that portion of the transportation from the points of origin to Aberdeen. The local rates to Lincoln paid by the Central Granaries Company were 7 cents from Dorchester and 12 cents from Shickley, leaving balances due for the movement from Lincoln to Aberdeen of 36.5 cents on the Dorchester shipment and 35.5 cents on the Shickley shipment, instead of the 41.5 cents collected. The former was overcharged 5 cents per 100 pounds, or $41.43, and the latter 6 cents per 100 pounds, or $48.55.

At the time of movement rates of 39.5 and 44 cents applied from Dorchester and Shickley, respectively, via the Burlington to Omaha and the Milwaukee by way of Aberdeen to Chicago, composed of rates to Omaha of 11.5 cents from Dorchester and 16 cents from Shickley under which storage was permitted at Lincoln, and a rate of 28 cents from Omaha to Chicago under which milling in transit was permitted at Aberdeen. If the shipments had been forwarded over this route the balances due for the movement from Lincoln to Omaha would have been 4.5 cents per 100 pounds on the Dorchester shipment and 4 cents per 100 pounds on the Shickley shipment.

The Aberdeen Mill Company, to which complainant sold the wheat f. o. b. Omaha, paid the freight charges assessed for the transportation beyond Lincoln, but charged back to complainant $671.50, the amount by which the charges paid exceeded those that would have accrued at the 28-cent rate from Omaha to Chicago. If the shipments had been forwarded by way of Omaha complainant would have been required to pay only a balance of $69.66 for the movement from Lincoln to Omaha at 4.5 cents per 100 pounds on the Dorchester shipment and 4 cents per 100 pounds on the Shickley shipment.

The Burlington admits liability for the misrouting of these shipments, stating that its agent at Lincoln failed to make notation on the waybills of the statement appearing on the bills of lading that the wheat was to be milled in transit for Chicago, and routed the shipments through Sioux City by which route milling in transit was not provided for.

We find the defendant Chicago, Burlington & Quincy Railroad Company misrouted the shipments; that complainant paid and bore charges thereon in excess of those which it would have been required to pay had the shipments been forwarded by way of Omaha; and

that it was damaged and is entitled to reparation from Walker D. Hines, Director General of Railroads, in the sum of $511.86, with interest, on account of the misrouting, and in the further sum of $89.98, with interest, on account of the overcharges.

Complainant also asks reparation on account of war taxes collected in excess of those which would have accrued if computed upon the rates applicable over the route by which the shipments should have moved. Following *Zelnicker Supply Co.* v. *S. Ry Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes, and we also hold that we may not properly include in an award of reparation the excess so paid. But this holding is not to be construed as interposing any obstacle to refund of the war tax on the overcharge in accordance with regulations promulgated by the Commissioner of Internal Revenue.

An appropriate order will be entered.

No. 8347.[1]

PEORIA BOARD OF TRADE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 8, 1919. Decided June 30, 1919.

1. Joint rates on grain, in carloads, from points in Illinois via Peoria, Ill., to points in eastern trunk line territory found to have been and to be unreasonable to the extent that they have exceeded or may exceed the aggregate of the corresponding rates subject to the act contemporaneously in effect to and from Peoria.
2. The adjustment of the joint rates not found to have been or to be unduly prejudicial to complainant or Peoria or unduly preferential of competing grain markets.
3. Reparation denied.

W. M. Hopkins and *W. T. Cornelison* for complainant.

Jeffery, Campbell & Clark and *J. S. Brown* for Board of Trade of Chicago; *George H. Evans* and *R. R. Hargis* for Indianapolis Board of Trade; *C. B. Stafford* for Memphis Merchants Exchange; *M. F. Doyle* for Cleveland Grain Company; *Herbert Sheridan* for Baltimore Chamber of Commerce; *Charles Rippin* for Merchants Exchange of St. Louis, interveners.

A. P. Humburg, R. V. Fletcher, E. A. Smith, F. E. Andrews, E. S. Ballard, K. F. Burgess, D. P. Connell, W. F. Dickinson, John M. Elliott, Wallace T. Hughes, R. B. Scott, T. J. Norton, R. H. Widdicombe, John G. Williams, G. B. Winston, and *C. C. Wright* for respondent carriers.

D. P. Connell, R. V. Fletcher, E. A. Smith, A. P. Humburg, and *R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

ATCHISON, *Chairman*:

Complainant is an association of grain dealers at Peoria, Ill. In its complaint and supplemental complaint, filed September 27, 1915, and April 28, 1918, respectively, it attacks the adjustment of the rates applicable on grain moving from points in Illinois to eastern trunk line territory. The adjustment is attacked on various grounds.

[1] This report also embraces Investigation & Suspension Docket No. 668, Illinois Grain; and Investigation & Suspension Docket No. 751, Grain from Illinois Stations via Peoria, Ill.

(1) It is alleged that the joint rates on grain from Illinois points to points in eastern trunk line territory are (*a*) unreasonable and in violation of the fourth section of the act to regulate commerce, in that they exceed the sums of the intermediate rates subject to the act; (*b*) that such joint rates are so constructed as to give long hauls from points of origin to Chicago, Cairo, and East St. Louis, Ill., and St. Louis, Mo.; and (*c*) that their application is unduly prejudicial to the grain dealers of Peoria and unduly preferential of the grain dealers of competing markets. (2) The complainant charges that the reshipping rates from Peoria to the eastern trunk line points, otherwise just and reasonable, are rendered unreasonable and unduly prejudicial to the grain dealers of Peoria and points in contiguous territory by the restriction which makes them inapplicable on grain originating at points from which joint rates are maintained via Peoria, while the corresponding reshipping rates from Chicago, Cairo, East St. Louis, and St. Louis are not so restricted. (3) It is alleged to be unreasonable and unjustly discriminatory to deny the application of the reshipping rates from Peoria to eastern trunk line territory on grain originating at Illinois points from which joint rates are in effect, while such reshipping rates from Peoria apply on grain originating at Kansas City, Mo., and Omaha, Nebr. (4) The complaint also charges that the rates or "specifics" charged for the transportation of Illinois grain to Peoria are unjust and unreasonable, and their application is unduly prejudicial to the grain dealers of Peoria and unduly preferential of the grain dealers in competing markets. (5) The shipments of grain to and from Peoria are claimed to be separate and independent transportation movements, and it is alleged that the members of the complainant board of trade, the farmers, and the country grain dealers are entitled to reasonable rates to Peoria irrespective of the disposition subsequently made of the grain, but are now denied such reasonable rates by reason of the existing transit arrangement in connection with the joint rates to eastern trunk line territory. (6) Finally, it is said that joint rates are unnecessary, as none are maintained from Illinois points through Peoria to points in central freight association, southeastern, or Mississippi Valley territories, or from certain points in Illinois through Peoria to points in eastern trunk line territory, or from any points in Illinois through Cairo, St. Louis, or East St. Louis to points in eastern trunk line territory. The complainant prays that Peoria be relieved of the burden of the joint rates; that the defendants be required to maintain reasonable separately established rates inbound to Peoria and outbound thence to eastern trunk line territory, for application upon all Illinois grain. There is a prayer for reparation on shipments to and from Peoria under the rates assailed.

Through their respective commercial organizations or individually, grain dealers at Chicago; St. Louis; Indianapolis, Ind.; Cleveland, Ohio; Baltimore, Md.; and Memphis, Tenn., intervened in opposition to or in support of the complaint as they deemed their interests to require. Two hearings have been had, prior to the second of which the Director General of Railroads was made a defendant.

While the allegations of the complaint and supplemental complaint are more broad, the record upon the question of reasonableness is confined practically to the joint rates applicable via Peoria, particularly from the rate group in which Peoria is situated; and, upon the question of undue prejudice, the record bears mainly on the relationship of the joint rates via Peoria and Chicago, respectively.

We do not need to comment upon the importance of Illinois as a grain-producing and distributing state, nor upon the competition between various centers through which grain moves, as those facts are of common knowledge. Illinois grain is shipped to eastern trunk line, central freight association, southeastern, and Mississippi Valley territories, but joint rates are maintained only to eastern trunk line territory. The through rates to the other territories are made by combination of rates on the market to which the grain moves in the first instance. Prior to April, 1907, the joint rates to eastern trunk line territory were made by taking established percentages of the Chicago-New York rate as the 100 per cent standard, and by adding thereto an arbitrary 2 or 3 cents, as determined by the originating line. This practice of "plussing the rates" was followed because the western lines were not satisfied with the divisions of the through rates accruing to them when made on the regular percentage basis. The east-of-Chicago divisions of the joint rates made in the manner stated varied according to the points of origin of the grain. This condition was unsatisfactory both to the carriers and to the Chicago grain dealers. In April, 1907, the carriers established so-called "specifics" from Illinois producing points to Chicago, and from Chicago to points in eastern trunk line territory, and the joint rates published from points of origin to destination were made equal to the sums of these specifics. The specific east of Chicago was the same irrespective of the origin of the grain in Illinois. It was also the same as the reshipping rate from Chicago to New York applicable on grain originating either at points in trans-Mississippi River territory or at points in Illinois on the eastern lines from which the joint rates to eastern trunk line territory did not apply via Chicago.

From certain Illinois territory the carriers also established specifics to and from Peoria. The former were uniformly one-half cent per 100 pounds less than those to Chicago and the latter uniformly one-half cent per 100 pounds greater than those from Chicago. The

specific from Peoria to eastern trunk line points was not, however, the same as the reshipping rate from Peoria to the same points applicable on grain originating in trans-Mississippi River territory, nor the same as the reshipping rate applicable on grain originating at points in Illinois from which the joint rates did not apply via Peoria. These specifics, like those to and from Chicago, were not and are not published as separately applicable rates either on traffic to Peoria or from Peoria to eastern trunk line territory. They represented merely divisions of the joint rates.

Since 1885 there has been in existence a maximum schedule of distance rates for the transportation of grain promulgated by the Illinois commission, but the carriers published intrastate rates from Illinois points to Chicago, Peoria, East St. Louis, and Cairo which, generally speaking, were lower than the maximum schedule. When the complaint herein was filed, the published rates applicable on state traffic to the various Illinois markets were lower than those applicable to those markets on interstate traffic. The published rates applicable on interstate traffic were not the same in all instances as the specifics to Chicago or Peoria pertaining to grain reshipped to eastern trunk line territory. There was a closer approximation between the specifics and the interstate or intrastate rates to Chicago than between the specifics and the interstate or intrastate rates to Peoria. From practically all points in the territory immediately tributary to Peoria the specifics to that market were greater than the intrastate or interstate rates thereto. When, therefore, grain which had been bought at these Illinois points and had been shipped to Peoria was reshipped from that city to eastern trunk line territory, the inbound carrier, upon notification thereof by the transit bureau, collected from the Peoria dealer an additional sum based upon the difference between the applied inbound rate and the inbound specific.

With some exceptions, which will be explained later, joint rates are maintained on carload grain from groups of producing points in Illinois to points of consumption in the trunk line territory. In the grouping of points of origin, taking the same joint rates to New York as typical of eastern trunk line destinations, Peoria is located in the largest group, which extends north and south for a distance of approximately 300 miles and east and west for a maximum distance of about 150 miles.

Since the inception of this case the joint rates have twice been increased; 15 per cent on March 25, 1918, and later dates, following our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303; and 25 per cent, subject to a maximum increase of 6 cents, on June 25, 1918, as a result of General Order No. 28 of the Director

General of Railroads. Thus, the rate from the Peoria group to New York was increased from 23.8 to 26.5 cents and again to 32.5 cents.

Joint rates to the trunk line territory are maintained only from points in Illinois. From trans-Mississippi and other western territory separately established rates are maintained in and out of the Illinois primary markets. The exceptions to the joint-rate adjustment on Illinois grain, heretofore mentioned but left unexplained, have reference to points in comparatively close proximity to Peoria from which joint through rates were not or are not maintained through Peoria to the trunk line territory. These points are on the Cleveland, Cincinnati, Chicago & St. Louis Railroad, the Illinois Traction System, the Illinois River, and the Chicago & North Western Railway when the movement from Peoria is over either the line of the Chicago & Alton or the Chicago, Peoria & St. Louis Railroad. In *St. Louis Electric Terminal Ry. Co.* v. *C., C., C. & St. L. Ry. Co.*, pending before us, is involved, *inter alia*, the establishment of through routes and joint rates applicable thereto on grain from Illinois Traction System points not served by the defendant carriers to points on the New York Central system. As hereinafter stated, joint rates to eastern trunk line territory have since been established by the Chicago & North Western via Peoria and the two lines mentioned. Otherwise, from these localities close to Peoria the local rate is charged for the service to Peoria, and if the grain is subsequently shipped to eastern trunk line territory it moves under the established reshipping rate, which, using New York City as an example, was formerly 18.3 and is now 26.5 cents per 100 pounds. From Chicago, again using New York City as illustrative, the reshipping rate was 16.8 and is now 24.5 cents, and its application is restricted to points of origin from which no joint rates apply in the manner that the reshipping rate from Peoria is limited as to points of origin of the grain.

At the first hearing it was shown that from an extensive circle of territory surrounding Peoria the joint rates were greater than the aggregates of the rates which would be applicable on interstate traffic to and from Peoria if the joint rates were canceled. The combination rates so made were less than the joint rates from intermediate points on the same lines.

At the supplemental hearing the defendants pointed out that by the application of General Order No. 28, under which the rates on corn were made the same as on wheat, the differential between the reshipping rates from Chicago and Peoria was increased from 1.5 to 2 cents, and that the 25 per cent increase applied to the in-and-out factors has largely reduced the number of instances in which the sums of the aggregates are exceeded by the joint rates.

The issues stated in the pleadings and developed by testimony are numerous and complex. There have been many and important changes in the rates and rate structure while this protracted proceeding has been in progress. As summarized on oral argument, complainant's position is that the grouping of the points of origin should be abandoned; that the joint rates should be canceled; that the rates inbound to Peoria should be made with reference to distance; and that the outbound rate should be a constant quantity, fairly related to the corresponding rate outbound from Chicago.

It is settled doctrine that in so far as the joint rates via Peoria exceed the aggregate of the contemporaneous rates subject to the act to and from that point which would apply if the joint rates were canceled, they are prima facie unreasonable, and there is no showing to the contrary. *Williams Co.* v. *Pennsylvania Co.*, 50 I. C. C., 531, and cases therein cited. We pass, then, to the question of the adjustment of the rates via Peoria and Chicago.

If the farmer sold his grain for delivery in eastern trunk line territory, he would be concerned chiefly with the joint rate and not with the junction through which his grain passed, except from the standpoint of expedition and the standard of service. In practice, however, he does not undertake to reach directly the points of consumption in the trunk line territory, but sells his grain for delivery at a primary grain market, at the price there prevailing, and consciously or unconsciously bears the whole or a major portion of the transportation charges thereto. By the custom of the trade, the grain is considered as in transit from the point of production to the point of ultimate delivery, even though it may rest for a considerable period in the primary market, and although the ultimate destination may have been unknown when the movement began, and the title may have passed and the parties to the shipment be changed during the detention at the primary market.

When an expense bill covering an inbound movement from a point with a specific higher than the local rate to Peoria is surrendered as authority for the application of the equivalent of the outbound specific, it is the practice of the inbound carrier to bill the consignor of the outbound shipment for the difference between the inbound specific and local rate. The outbound carrier bills the outbound shipment on basis of the specific from Peoria as representing the balance of the joint rate, and collects such amount from the consignee. This practice differs from that usually applied to transit shipments moving under joint rates, in that it is customary for the outbound carrier to collect the entire balance of the joint rate. Substantially the same practice is followed on grain handled via Chicago. As above pointed out, however, the specifics to and from Chi-

cago very closely approximate, when they are not identical with, the local inbound and reshipping rate outbound. Thus, the balance of the joint rate is collected by the delivering carrier and there is seldom a further collection by the inbound carrier from the Chicago dealer. At the first hearing there was much controversy as to who actually bore this difference, and this was one of the questions as to which we requested further testimony at the second hearing. It now appears that on grain accumulated in Peoria for future delivery this difference in some instances falls upon the Peoria dealers, and in other cases, in whole or in part, upon the farmers or country dealers in near-by territory. The Peoria middleman, who is the consignor of the outbound shipment to eastern trunk line territory, does not complain of the fact that he pays the balance of the through rate partly to the western carrier and partly to the eastern carrier. He complains because the variable difference between the inbound specific and local rate operates to render the value of his grain at Peoria uncertain, and consequently prejudices him in disposing of it in eastern trunk line territory.

The testimony is in conflict as to the basis on which the price is determined for grain purchased by Peoria dealers. One of the complainant's witnesses testified it is purchased on the basis of local rates to Peoria, either in bidding the country or in settling with a farmer who shipped to Peoria on consignment. Another witness testified that at times in bidding the market 2.5 cents per 100 pounds is added to the local rate to the market, which is assumed in the long run to approximate the difference between the local rate to Peoria and the specific or proportion of the joint rate accruing to the originating lines. In any event, as the foundation of complainant's case is Chicago's alleged advantage by reason of a closer relationship of inbound rates and specifics, the fair inference is that Peoria buys upon less favorable terms.

An analysis of the situation readily discloses that Chicago's advantage and Peoria's disadvantage result, not so much from the uniform application to the through movements of the same joint rates from the grouped points of origin via either Peoria or Chicago, as to the dissimilar trade customs which govern the purchase of grain by or at those markets, to which the usual transportation principles governing the movement of articles in transit must apply. The underlying theory of transit is that of a continuous transportation from point of origin to ultimate destination, and it can not be successfully claimed that as between such points in this case there is any inherent vice in equal joint rates applying over the different routes. On the contrary, the result of such an adjustment gives the producing points a choice of primary markets. The grievance here is attributable to the natural

circumstance that on grain originating in the territory adjacent to Peoria and subsequently forwarded from that point to eastern trunk line territory the balances of the joint rate are larger than on corresponding shipments via Chicago, and, by reason of the basis on which the grain is purchased, are borne at least in part by the shipper outbound from Peoria. Not only, therefore, must we look beyond the rate adjustment itself for the causes out of which Peoria's disadvantage grows, but if the desired relief were accorded, Peoria would secure the virtual monopoly of the grain from adjacent territory, now bought in competition with Chicago, which complainant frankly claims as Peoria's natural right. Such a result we have deprecated in other cases. *Kansas Transportation Bureau* v. *A., T. & S. F. Ry. Co.*, 16 I. C. C., 195; *Omaha Grain Exchange* v. *C., R. I. & P. Ry. Co.*, 53 I. C. C., 249, 266–7.

The complainant's contention that the in-and-out shipments are wholly unrelated is not consistent with an appeal to our jurisdiction over the inbound factor, or complainant's right to use the reshipping rate outbound. As we said in *Memphis Merchants Exchange* v. *I. C. R. R. Co.*, 43 I. C. C., 378, 391:

> If, as contended by the Cairo interests, shipments to Cairo are local to that point, the through interstate rates to Mississippi Valley points do not apply from points of origin. The lawful rates to apply outbound from Cairo, when a shipment is from Cairo proper, are the local rates, which are higher than the reshipping rates from that point. A shipment can not properly be local to Cairo and at the same time be entitled to be reshipped therefrom at the remainder of the through rate from point of origin. The defendants publish through rates on grain and provide for reshipping in transit at Cairo. The stoppage at that point is for the convenience, and doubtless at the request, of Cairo dealers. Any device, by transfer from one carrier to another, or which in any other manner has the effect of defeating through interstate rates, is unlawful.

On the other hand, if we were to prescribe separately established in-and-out rates it would result in the situation which occasioned the complaint in *Merchants Exchange of St. Louis* v. *B. & O. R. R. Co.*, 34 I. C. C., 341, unless for the future the inbound intrastate rates were consistently maintained at the level of the inbound interstate factors prescribed by us; and this record contains no adequate data for a determination of reasonable inbound interstate rates.

Of complainant's contention that the varying balances, dependent upon the points of origin, accruing upon reshipment from Peoria to eastern trunk line territory, are subject to the criticism expressed in the case last above cited, it is enough to say that when such shipments become interstate the inbound portion of the movement is adjusted upon the basis of a constant proportion or specific from the particular group, and the remainder is an unvarying balance, corresponding to the outbound specific.

In *State of Iowa* v. *B. & O. R. R. Co.*, 46 I. C. C., 595, 599, we found that the maintenance of proportional rates to Peoria from points in central freight association territory, applicable on traffic to the northwest, which varied with the point of origin or destination, were not unreasonable, unduly prejudicial or otherwise unlawful. In that case it was shown that the proportional rates were established to equalize the rates between the same points on traffic via Chicago. We said:

> The equalization of rates via the Peoria gateway is not confined to articles named in this complaint, but extends to all traffic. The adjustment has been in effect for many years.

Collateral to the issues here under consideration are two instances, in Investigation and Suspension Dockets Nos. 668 and 751, where the defendant carriers made certain increases in their adjustment: (1) The Chicago & North Western, by extending the application of the joint rates from points on its line in Illinois to the trunk line territory through Peoria and outbound from that point either over the Chicago & Alton or the Chicago, Peoria & St. Louis; and (2) the Cleveland, Cincinnati, Chicago & St. Louis, by increasing its local rates into Peoria from points on its line east thereof to a level that, when combined with the outbound reshipping rates, would aggregate not less than the joint through rates contemporaneously maintained for the direct movement into the trunk line territory from the same points of origin. Although these increases, being directly in opposition to the pending complaint, were suspended upon protest from this complainant, they since became effective upon expiration of the statutory period of suspension. In view of our conclusions upon the complaint we think the increased rates properly became effective.

No violation of the act is established in support of the third and sixth grounds of complaint as previously summarized, and our conclusions render it unnecessary to consider the remaining allegations.

Upon all the facts of record we find that the joint rates on grain, in carloads, from Illinois points via Peoria to eastern trunk line territory were, are, and for the future will be unreasonable to the extent that they have exceeded or may exceed the aggregates of the corresponding rates subject to the act, contemporaneously in effect to and from Peoria; and that the adjustment of the joint rates is not shown to have been or to be unduly prejudicial to complainant or to Peoria or unduly preferential of competing grain markets.

The complaint seeks reparation to the extent that rates have been paid in excess of the combination of the local rate inbound and the reshipping rate outbound. Complainant has filed a list of its members, "many of whom," it is alleged, "have been required to pay said unjust, unreasonable, and discriminatory rates." The record does not

show the specific sums charged or by whom paid. The complainant has formally stated that it does not expect an award of reparation herein until a proper showing has been made as to the parties entitled thereto. In this silent condition of the record, there is no basis afforded for an award of reparation.

No order will be entered at this time, but the defendants should revise their rates within 90 days from the date of service hereof to conform to the foregoing findings, and to observe strictly the provisions of the fourth section of the act at intermediate points. If this is not done the matter may again be brought to our attention.

WOOLLEY, *Commissioner*, dissenting:

I desire to be recorded as not concurring in the general view expressed by the majority, in discussing the request of the complainant for the establishment of inbound rates on a distance basis, that "if the desired relief were accorded, Peoria would secure the virtual monopoly of the grain from adjacent territory, now bought in competition with Chicago, which complainant frankly claims as Peoria's natural right. Such a result we have deprecated in other cases." Notwithstanding the distances inbound usually favor Peoria, the following language of the majority seems to concede that the present rates place Peoria under a handicap: "In any event, as the foundation of the complainant's case is Chicago's alleged advantage by reason of a closer relationship of inbound rates and specifics, the fair inference is that Peoria buys upon less favorable terms."

Peoria's natural advantage, accruing from her closer proximity to the important territories of origin here involved, should be reflected in rates inbound that are made with due regard to distance. Such a system of rates would produce results founded upon principles of justice and equity; while Peoria would properly secure an advantage in drawing grain from contiguous sources of supply, other markets would benefit similarly in territory which, gauged by distance, is theirs. The Commission should, in my opinion, require the establishment of rates to Peoria that shall not exceed the rates for like distances to Chicago and other markets with which Peoria is in competition for this trade, and reasonably adjusted reshipping rates outbound.

No. 9887.

ST. LOUIS ELECTRIC TERMINAL RAILWAY COMPANY ET AL.

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 7, 1919. Decided June 30, 1919.

Upon application of the Illinois Traction system for an order requiring the establishment of through routes and joint rates between points on the lines of the Illinois Traction system on the one hand and points on the New York Central system on the other, Held:

1. That through routes should be established for the transportation of freight traffic except coal from and to all points on the line of the Illinois Traction system between Lincoln and Mackinaw, to and from all points on the New York Central system, and joint rates applicable thereto not higher than the rates contemporaneously applied on like traffic from and to Peoria.
2. That through routes for the transportation of freight traffic except coal should be established to and from Mechanicsburg from and to all points on the New York Central system, and to Fetzer from all points on the New York Central system, and joint rates applicable thereto not higher than the rates contemporaneously effective on like traffic to and from Springfield.
3. That through routes for the transportation of grain should be established from elevators located on the Illinois Traction system at points not served by defendant carriers to all points on the New York Central system, and joint rates applicable thereto not higher than the rates contemporaneously applied on grain from Peoria.

James A. Knowlton for complainants.

R. Walton Moore for Director General of Railroads.

Ernest S. Ballard and *D. P. Connell* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

HALL, *Commissioner:*

The following is in substance the statement of the issues and facts proposed by the examiner:

The St. Louis Electric Terminal Railroad Company, one of the complainants, is a railroad corporation organized under the laws of the state of Missouri and engaged in operating a line of electric railway extending from St. Louis, Mo., across the Mississippi River to Madison, Ill. The other complainants, the St. Louis, Springfield &

Peoria Railroad, Bloomington, Decatur & Champaign Railroad, Illinois Central Traction Company, and the Danville, Urbana & Champaign Railway Company, are railroad corporations organized under the laws of the state of Illinois and engaged in the operation of lines of electric railway which, together with the railroad from St. Louis to Madison, extend from the city of St. Louis northwardly to the cities of Springfield, Peoria, and Bloomington, and eastwardly from the city of Springfield through Decatur to Danville, and northerly from the city of Decatur to Bloomington, all in the state of Illinois. This system of electric railroads comprises about 425 miles of line and is known as the Illinois Traction system.

By complaint filed September 24, 1917, they allege that the defendants, lines comprising the New York Central system, refuse to establish through routes and joint rates for the transportation of property between points on the lines of complainants and points on the New York Central system; that direct physical connection for the interchange of property between the rails of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants, and the Illinois Traction system now exists at Mackinaw Junction, Bloomington, Champaign, and Lyons, Ill., adjacent to Danville, and through terminal railways at Peoria and St. Louis; that there are located on the lines of the Illinois Traction system a number of villages and communities not served by any other rail carrier; also a large number of grain elevators, certain brick plants, and other industries from and to which large quantities of freight are shipped; that defendants have heretofore established and now have in effect through routes and joint rates in connection with substantially all carriers by rail in the state of Illinois, except these complainants; that the maintenance of through routes and joint rates with other lines and their refusal to establish reasonable through routes and joint rates by the lines of these complainants to and from points on their lines subject shippers and receivers of freight to unjust and unreasonable prejudice and disadvantage and constitute unlawful discrimination against these complainants.

The prayer of the complainants seeks an order requiring the defendants to establish through routes and reasonable joint rates from and to all points on the lines of the defendants to and from all points on the lines of the complainants, said rates to be upon the same basis as rates established and in effect upon lines of the defendants in connection with other railroads serving the same territory in the state of Illinois as that served by complainants.

On behalf of the complainants it was shown that their freight equipment consists of 31 locomotives, 17 express motor cars, 215 box cars, 40 stock cars, 695 coal cars, 35 flat cars, and 5 refrigerator cars. All of these cars are standard gauge and in all respects suitable for

interchange with other lines. The lines of complainants have physical track connections for interchange of freight traffic with the lines of the other carriers at the following-named points: With the Baltimore & Ohio at Springfield; with the Chicago & Alton at Anderson, Selbytown, and Springfield via Springfield Terminal Railway; with the Chicago & Eastern Illinois at Bronson, Glover, and Westville; with the Chicago & North Western at Benld; with the Chicago, Peoria & St. Louis at Springfield via Springfield Terminal Railway; with the Cincinnati, Indianapolis & Western at Springfield; with the Cleveland, Cincinnati, Chicago & St. Louis at Lyons, Champaign, and Mackinaw; with the Illinois Central at Bloomington and Springfield; with the Litchfield & Madison at Stallings and Worden; with the Pennsylvania Company at Maroa; with the Southern at Venice; and with the Wabash at Danville, Decatur, Springfield, Staunton, Urbana, and Worden, Ill. In addition to the direct connections above named connections are installed with the Peoria & Pekin Union at Peoria, with the Peoria Railway Terminal at Peoria, and through these terminal lines with all carriers connecting therewith at Peoria and Pekin, with St. Louis Merchants' Bridge Terminal Railway at Granite City, and in St. Louis, and through this and associated terminal lines, with all carriers diverging from St. Louis and East St. Louis.

It appears that joint rates are in effect on classes and many commodities between points on the Illinois Traction system [1] and points

[1] The traction system has through routes and joint class and commodity rates over its entire line with the Chicago & Eastern Illinois, reaching Chicago on the north and St. Louis, Mo., Thebes, Ill., Evansville, Ind., on the south; with the Chicago, Rock Island & Pacific Railway, reaching Chicago, Peoria, St. Louis, St. Paul, Minn., Watertown, S. Dak., Denver, Colo., Santa Rosa, N. Mex., Dallas, Tex.; with the Colorado & Southern reaching Cheyenne, Wyo., Denver, Pueblo, and Trinidad, Colo.; with the Cincinnati, Indianapolis & Western, reaching Springfield, Ill., and Hamilton, Ohio; with the Louisville & Nashville, reaching New Orleans, La., Mobile, Ala., Pensacola, Fla., Louisville, Ky., and Cincinnati, Ohio; with the Louisville, Henderson & St. Louis, reaching Evansville, Ind., and Louisville, Ky.; with the Missouri Pacific, reaching Kansas City, Mo., Omaha, Nebr., Fort Worth, Tex., Pueblo, Colo., and New Orleans, La.; with the Missouri, Kansas & Texas, reaching from St. Louis, Mo., to Dallas, Houston, and San Antonio, Tex.; with the Minneapolis & St. Louis, reaching Peoria, St. Paul, Minn., and Lebeau, S. Dak.; with the Mobile & Ohio, reaching Montgomery and Mobile, Ala.; with the St. Louis-San Francisco, reaching Kansas City, Wichita, Kans., Dallas, Oklahoma City, Okla., and Birmingham, Ala.; with the St. Louis Southwestern, reaching Fort Worth, Dallas, Waco, Tex., and Shreveport, La.; with the Tennessee Central, reaching Hopkinsville, Ky., and Harriman, Tenn.; with the Union Pacific, reaching Kansas City, Omaha, Denver, Salt Lake City, and Ogden, Utah; and with the Wabash, reaching Detroit, Mich., Toledo, Ohio, and Buffalo, N. Y. Joint class and commodity rates are in effect between points on the Illinois Traction System and portions of the following lines: Atchison, Topeka & Santa Fe; Chicago & Alton; Chicago, Burlington & Quincy; Elgin, Joliet & Eastern; Grand Rapids, Grand Haven & Muskegon; Graham & Morton Transportation Company; Great Northern; Kansas City Southern; Missouri & North Arkansas Railroad; and Northern Michigan Transportation Company.

There are commodity rates in effect, but no class rates, between points on the Illinois Traction System and points on the Baltimore & Ohio; Chicago, Peoria & St. Louis; Colorado Midland; Illinois Southern; Litchfield & Madison; Lehigh Valley; Morgan's Louisiana & Texas Railroad & Steamship Company; and Southern Railway.

There are switching rates in effect between points on the Illinois Traction System and points on the Peoria Railway Terminal; Peoria & Pekin Union Railway; St. Louis Merchants' Bridge Terminal, and Terminal Railroad Association of St. Louis.

on the railroads leading north, west, and south. The total freight revenue of the system for the year 1916 was $634,967.82. The average number of loaded freight cars moved per day during the month of October, 1917, was 302. The total tonnage of freight moved in line haul, including company material, during the month of September, 1917, was 90,042 tons.

In the year ended August 31, 1917, 2,021 cars of grain, originating at 61 different stations and billed from 36 different stations, were shipped over the lines of the traction system. Of these cars, 679 were billed from Union, Burt, Mindale, Mechanicsburg, and Hamel, which are local stations on the Illinois Traction system, and certain cars billed at Maroa, Clinton, and Chatham, which are not local stations, originated at Craig and Woodside, which are local stations. Much of this grain went to Peoria and St. Louis, but the record shows many shipments to Chicago, Ill.; Henderson and Louisville, Ky.; Evansville, Ind.; Detroit, Mich.; Baltimore, Md.; New York and Buffalo, N. Y.; Toledo, Ohio; Nashville and Memphis, Tenn.; and New Orleans, La. There are transfer elevators on the traction system at Granite City, Springfield, Peoria, Decatur, and Glover, and shipping elevators at approximately 30 points. These shipping elevators have a total capacity of over 750,000 bushels. There are plants for the manufacture of brick at Danville, Carlinville, and Decatur; a plant at Carlinville for manufacturing drain tile, building tile, and silo blocks; a creamery company at Litchfield, manufacturing butter and condensed milk; the Brown Shoe Company, also at Litchfield, manufacturing shoes; the National Lead Company at Granite City, operating a white lead warehouse; the Hoyt Metal Company at Granite City, manufacturing babbitt metal and pig lead; and the Western Cartridge Company at Springfield, manufacturing powder. The brick plant at Danville also manufactures roofing and drain tile.

All of these industries are located on the lines of the traction system. The plants at Carlinville are also connected with the Chicago & Alton Railway; the Decatur brick plant is provided with a switch connecting with the Vandalia and with the Illinois Central; the National Lead Company is provided with a switch to the St. Louis Merchants Bridge Terminal Railway, as is also the Hoyt Metal Company. There are several coal mines on the system, but the complainant is not seeking the establishment of through rates on coal, and it is not necessary to enumerate these mines. From July 1, 1916, to September 1, 1917, the Shanklin Manufacturing Company and United Supply Company moved into Fetzer 233,029 pounds of miscellaneous freight by lines other than the Illinois Traction system, mainly from eastern territory. In the hauling of this traffic it was necessary for the consignees to pay a drayage charge, which would

have been avoided if through rates had been in effect to Fetzer by the Illinois Traction system. During September, October, and November, 1917, 21,625 pounds of less-than-carload freight and five carloads were shipped from eastern points to the traction system, upon which it would have received a haul and a division of the rate if joint rates had been in effect.

The following stations on the traction system are not served by the lines of other carriers: Mechanicsburg, Evans, Wilmert, Union, Burt, Richmond, Sutter, Mindale, and Walnut. Mechanicsburg is on a spur extending south from the line running from Springfield to Decatur. The other stations named are all located on the line from Lincoln to Mackinaw. During October, 1917, the number of shipments handled on joint through rates with other lines was: Less than carload, 3,016, weighing 1,150,000 pounds; in carloads, other than grain, 133, weighing 4,987 tons. During the same month 476 cars were switched to or from the lines of other carriers. It was testified that all kinds of equipment in which freight is carried can pass safely over the entire system except a portion of the line through the city of Champaign and a part of the Hillsboro branch. Ordinarily the cars owned by the traction system are not allowed to go off the system, but the contents of the cars are transferred at the expense of the traction system at points of interchange with other lines. For the purpose of transferring grain elevators are maintained at Granite City, Springfield, Decatur, and Peoria, and at Glover, near the eastern terminus of the line.

A number of shippers engaged in the elevator or manufacturing business, whose plants are situated on the tracks of the complainants, testified respecting the disadvantages under which they continued their business by reason of the fact that they were not able to secure joint through rates via the traction lines to and from points on the New York Central system.

The reasons urged by the representative of the New York Central system for refusing to join with the complainants in the publication of joint rates are: First, no public necessity for joint rates; second, disinclination of the traction system to allow its equipment to pass off its own rails. In regard to the first contention it is stated that the lines of the Illinois Traction system are closely paralleled by the lines of steam railroads throughout much of the territory served. This is true as to the lines from East St. Louis to Springfield, from Springfield to Lincoln, from Peoria to Mackinaw, from Bloomington to Decatur, from Mackinaw to Bloomington, and from Springfield to Danville. It is not true as to the portion of the line from Lincoln to Mackinaw. Most of the stations on this line are located from 3 to 5 miles from the nearest station of any steam line. Me-

chanicsburg, a town with a population of approximately 420 people, is not served by any other line, and the nearest steam-line station is 1.7 miles away. Hamel, a station near the southern end of the line, is not located on any other road. It has a population of about 30 persons. The only industry is a grain elevator, which is about 3.2 miles from Worden, on the Wabash.

In *Lourie Mfg. Co.* v. *C. N. R. R. Co.*, 42 I. C. C., 448, we required the lines comprising the New York Central system to publish joint rates for the transportation of property from Fetzer, a station a few miles from Springfield, to all points on the New York Central system, and observance of the long-and-short-haul rule of the fourth section makes necessary the publication of rates from points east of Fetzer not higher than the rates from Fetzer should the route over which the rates are applied be through Champaign or Lyons. If the rates are applied via Mackinaw or Bloomington the rates from stations intermediate to Fetzer via this route can not be higher than from Fetzer. The objection urged to joint rates with the traction system on account of its lack of cars and consequent unwillingness to let its freight cars go off its line was urged in connection with the *Lourie Mfg. Co. Case*, *supra*, but the objection was not considered as of sufficient weight to warrant us in denying through rates from Fetzer when it was evident that the convenience of shippers would be materially served by the establishment of such rates. It is evident here that the convenience of shippers will be served by the establishment of joint inbound rates to Fetzer and by joint rates to and from Mechanicsburg, and all stations between Lincoln and Mackinaw. It is evident also that the convenience and the interests of shippers of grain will be materially served by the establishment of joint rates on grain from all elevators located on the Illinois Traction system to all points on the New York Central system.

After making substantially the foregoing statement of issues and facts the examiner proposed that we should find and conclude that:

1. Through routes should be established for the transportation of freight traffic except coal from and to all points on the line of the Illinois Traction system between Lincoln and Mackinaw, to and from all points on the New York Central system, and joint rates applicable thereto not higher than the rates contemporaneously applied on like traffic from and to Peoria.

2. Through routes for the transportation of freight traffic except coal should be established to and from Mechanicsburg, from and to all points on the New York Central system, and to Fetzer from all points on the New York Central system, and joint rates applicable thereto not higher than the rates contemporaneously effective on like traffic to and from Springfield.

3. Through routes on grain should be established from all elevators located on the Illinois Traction system to all points on the New York Central system and joint rates applicable thereto not higher than the rates contemporaneously applied from Peoria.

4. In the establishment of the rates proposed regard must be had for the requirements of the fourth section in the establishment of rates to and from intermediate points.

After exceptions had been noted by defendant carriers a supplemental complaint was filed naming the Director General of Railroads a party defendant. At his request further hearing was had and argument heard.

The additional evidence offered for defendants covers in detail the population of the localities and the location of stations and elevators on the traction system in relation to distance from stations served by the various steam lines. The purpose of this evidence was to show that the relief sought by the traction system would benefit a limited number of shippers and affect but a small amount of traffic, and that the territory in question is adequately served by the steam lines.

At the time of the first hearing the combination rates on grain from elevators on the lines of the traction system through Chicago to trunk line territory were composed of joint and proportional specifics published by the traction system and its connections, other than defendant carriers, to Chicago plus reshipping rates beyond, which equalled the joint through rates published by the steam lines from their stations in the same Illinois groups. Effective June 25, 1918, by tariffs filed under authority of General Order No. 28, issued by the Director General of Railroads, the specifics from all stations on the traction system to Chicago for reshipment beyond were increased to 9 cents, which exceeded and exceed by a half cent the rates from the stations on the lines of the steam roads in the same group.

By tariffs effective November 1, 1918, three elevators on the traction system secured rates to Peoria which, together with the Peoria reshipping rates to trunk line territory, resulted in combinations less than the joint rates from stations on the steam lines in the same group; one elevator secured a combination on Peoria equal to the joint rates; and from all other elevators on the traction system the Peoria combinations exceeded and exceed the joint rates.

Effective January 27, 1919, the joint proportional rates from all elevators on the traction system in connection with the Wabash were 9 cents to Danville and the reshipping rates from Danville east were the same as from Chicago; thus the combinations through Danville exceed by 1 cent the joint rates from stations on the steam lines. Under these tariffs the grain must be surrendered by the traction system to the Wabash at Decatur, necessitating a back haul from stations east thereof.

Equal reshipping rates from Danville are provided by the defendant carriers, but their application does not extend to grain

originating on the traction system for transfer to their lines direct. The complainants state that their shippers prefer and desire the additional eastern outlet over the direct routes in connection with the defendants' lines.

For defendants it is pointed out that while the complainants are seeking joint rates on grain in connection with the defendant carriers' lines, the complainants in *Peoria Board of Trade* v. *A., T. & S. F. Ry. Co.*, *ante* p. 42, attempted to secure the cancellation of the steam lines' joint rates on grain from the same Illinois groups through Peoria to trunk line territory and the establishment of reasonable inbound rates to Peoria, based on distance, with constant outbound rates beyond, fairly aligned with the outbound rates from Chicago. But we have declined to disturb the present adjustment except to require the removal of certain fourth section departures.

The defendants' principal exception to the first three conclusions proposed by the examiner is that they are based upon serving "the convenience and interests of shippers." They contend that the test of "public necessity" should be applied, that the evidence is insufficient to support the conclusions if the public-necessity test is applied, and that the grain shippers in the territory served by the traction system are adequately served by the paralleled steam lines.

In *Lourie Mfg. Co.* v. *C. N. R. R. Co.*, *supra*, we said:

> In cases previously decided involving the question of establishing through routes, we have made public necessity the test, *Chicago, Ottawa & Peoria Ry. Co.* v. *C. & N. W. Ry. Co.*, 33 I. C. C., 573. But it does not follow that a through route must be indispensable in order to be considered a public necessity. When it is shown that such a route is a great convenience to shippers, adds materially to available transportation facilities, and is therefore a substantial benefit to commerce it must be held to satisfy the test of public necessity, and the record before us indicates the through routes here in question are demanded by these conditions.

It is our opinion that the test applied by the examiner is a proper one and that his first three conclusions are supported by the record. We adopt them as our own with the exception that in no instance will the defendants be required to join in through routes and joint rates from elevators located on the traction system at points served by them.

In excepting to the fourth conclusion the defendants contend that there is no evidence offered which would warrant the establishment of joint rates to and from intermediate points on the traction system lower than those now in effect. We adopt that conclusion as our own and as an admonition to the defendants that literal compliance with the previous conclusions will not relieve or excuse them from violations of the provisions of the fourth section of the act. The admonition is not untimely. In publishing rates prescribed in

Lourie Mfg. Co. v. *C. N. R. R. Co.*, *supra*, and in our orders after rehearing in that case, 49 I. C. C., 64, the defendants did not reduce the rates from intermediate points which thereby became higher than the joint rates prescribed from Fetzer, and filed no application to protect these departures from the provisions of the long-and-short-haul clause. The complainants state that the defendants refused to join them in correcting these departures, which still exist.

Nothing in this report is to be construed as relieving the traction system from obligation to furnish a proper share of the cars needed to transport the traffic originating on its line or in lieu thereof to maintain proper transfer facilities at its own expense so that no undue burden will be placed on defendants.

An order will be entered accordingly.

No. 10190.

VIRGINIA COAL & FUEL COMPANY
v.
NORFOLK & WESTERN RAILWAY COMPANY AND DIRECTOR GENERAL.

Submitted March 8, 1919. Decided August 1, 1919.

Complainant not entitled to an order requiring a switch connection with a proposed private track from its mine to the line of the Norfolk & Western Railway Company at Mathi's spur, Quaker, W. Va., since it has not provided a private track with which connection could be made. Complaint dismissed without prejudice.

J. H. Meek for complainant.

John H. Holt, *Lucian H. Cocke*, *Theodore W. Reath*, and *R. Walton Moore* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

The complainant recently secured a 30 years' lease of a tract of coal-mining land lying on both sides of the right of way of the Norfolk & Western Railway Company, hereinafter termed the defendant, near Quaker, Wayne county, W. Va. By complaint filed May 18, 1918, it alleges that the defendant in violation of section 1 of the act to regulate commerce has failed and declined, upon complainant's application, to construct, maintain, and operate a switch connection between defendant's line and a private track which complainant proposes to construct and maintain at its own expense on its property.

The application was not in writing, as required by section 1 of the act to regulate commerce. Waiver of this statutory requirement is stipulated by the parties, and they seek adjudication of the issue upon an application in writing made subsequent to the filing of the complaint, for which they ask the same force and effect as if made in conformity with the statute. By supplemental complaint the Director General of Railroads was made a party defendant prior to the hearing had on November 18, 1918.

Under an agreement between the United States Fuel Administration and the United States Railroad Administration that applica-

tions for the opening of new mines should be approved by the former before being considered by the latter the Fuel Administration on September 4, 1918, declined to recommend the opening of complainant's mine, on the ground that the labor and transportation conditions then existing were such that the mine could not reasonably be expected to yield increased production of coal.

Complainant's mine is located on the Twelve Pole line of defendant, near Quaker, where there is a switch 250 feet long known as Mathi's spur, owned and operated by the defendant, which accommodates 4 cars, and is used as a team track for the shipment of crossties and other sawmill products. During the month prior to the hearing complainant shipped from this spur 8 or 10 cars of coal, but in reaching it a wagon haul of 1,500 feet was necessary from the incline or chute at the mine. The coal was loaded into box cars. Complainant originally proposed a switch connection between this spur and its proposed track, but, as the degree of curvature was objectionable from an operating standpoint, this proposal gave way to a second which contemplates a switch connection with the main line near the point where Mathi's spur connects with the main line. This proposal, if accepted, would require the complainant to construct a track 1,500 feet in length from the chute at the mine to the defendant's right of way. The cuts and fills required for such a track would be comparatively light, and there would be no grades in excess of 1 per cent. The proposed track would cross Lick Log Creek and a trail or road paralleling it, recross the creek and pass diagonally through a school yard. Complainant urges that the trail is not recognized as an authorized county or state road; that the school term is about four months each year; and that the coal could be moved over its proposed track during periods of the day when children are not in attendance, but, if the school proved an obstacle to the installation of the track, the authorities would remove the building.

Complainant suggests that its proposed track could be used as a team track for the handling of other traffic, and thus permit abandonment of Mathi's spur. Defendant objects that such use would be impracticable, as the loading and unloading of other traffic would be interrupted by moving cars to or from the mine, and attended with danger, as cars might accidentally break loose at the tipple, run wild down the incline of the track, and collide with other cars in the process of loading and unloading; a danger which could be avoided by the installation of a derailer. Defendant also contends that the proposed track would interfere with its present yardage facilities for other shippers on Mathi's spur track. It is shown that other yardage facilities could be provided on the opposite side of this spur by filling in low ground.

Complainant has expended about $20,000 in opening its mine and preparing to ship coal. The coal from about 400 acres could be handled over the proposed track and, under complainant's estimate of approximately 4 feet of coal to the seam, the yield would be 4,000 tons to the acre or a total of 1,600,000 tons. The product of the mine is a good grade of domestic coal which is also suitable for steam purposes and has been sold by complainant to a sales agency in Wayne, W. Va., and also locally. Complainant expects to ship via the line of defendant to points in Ohio, Michigan, Kentucky, and Indiana. Its manager estimated that within a month from the date of the hearing 100 tons of coal per day, and within six months from 300 to 400 tons per day, could be tendered for shipment if the switch connection were made. A mining engineer, witness for the complainant, testified that if proper mining machinery, such as a compresser station or electricity, were installed, it would be possible to increase the production to 1,000 tons daily. Another mining engineer, witness for defendant, testified that under such conditions 250 tons could be produced daily although probably not at a profit.

Defendant contends that the coal seam is so interspersed with slate and other partings of waste material that it could not be made to pay; that there are no mines, other than wagon mines, on the Twelve Pole line; that no coal operation there has made any appreciable amount of money; and that the wagon mines have been resurrected only by war demands and the possibility of obtaining high prices for coal loaded in box cars.

The prospects for profitable operation are pertinent only as they may bear on the question of whether the switch connection, if made, will furnish sufficient business to justify its construction and maintenance by defendant.

The Twelve Pole line is the defendant's old main line. Its new main line, called the Big Sandy line, diverges from the old line at Kenova on the west and connects with it again at Naugatuck on the east, the distance between these points being 84 miles by the old line and 59 miles by the new. The two lines are used as a double track, the old for eastbound and the new for westbound traffic. A back haul would therefore be necessary in the movement westward from complainant's mine. The distance from Mathi's spur to Kenova via the old line is 44 miles, to Naugatuck 41 miles, making the haul to Kenova via Naugatuck and the new line about 100 miles.

The record discloses no unfavorable labor conditions in the vicinity of complainant's mine at the time of the hearing, and its coal has been mined by local labor, the supply of which is said to be ample.

HALL, *Commissioner:*

The foregoing, with unimportant modifications, embodies the pertinent facts set forth by the examiner in his proposed report, together with his recommendation that defendant be required to install the switch connection. To this recommendation defendant, without questioning the accuracy of the stated facts, objects upon the ground that the evidence does not establish a condition which, within the meaning of the statute, would justify the construction and maintenance of the switch connection.

From examination of the record we are of opinion and find that the complainant is a shipper tendering interstate traffic for transportation, and that the switch connection with complainant's private track as proposed would be reasonably practicable, could be put in with safety, and would furnish sufficient business to justify construction and maintenance of the same. But the record is silent as to what would be reasonable terms upon which to require defendant to construct, operate, and maintain such switch connection. The proposed track of complainant has not been constructed, and it has no track with which we can order a switch connection made. In *Ralston Townsite Co.* v. *M. P. Ry. Co.* 22 I. C. C., 355, we said:

> • • • It is a condition precedent to the exertion of the power of the Commission that such lateral branch line or private side track should be actually constructed in such manner that a physical connection is practicable and safe. • • • The fact is complainants have no side track or lateral railroad with which the defendant could make a switch connection if ordered by the Commission so to do.

An order will be entered dismissing the complaint without prejudice.

No. 10218.

FARGO IRON & METAL COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted March 31, 1919. Decided August 1, 1919.

Certain shipments of old thrashing engines found not to be of scrap iron within the meaning of the defendant's tariff, which applies only on scraps or pieces of iron or steel of value for remelting purposes only.

Barnett & Richardson for complainant.
Charles Donnelly and *B. W. Scandrett* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

The following is in substance the report proposed by the examiner who conducted the hearing:

This is a test case. Complainant contends that, under proper interpretation of defendant's tariff, the rate on scrap iron, and not the rate on secondhand engines which was assessed, should have been applied on the two carload shipments presently to be described, and asks for reparation. The reasonableness of the tariff description of scrap iron, which applies "only on scraps or pieces of iron or steel of value for remelting purposes only," is not in issue. Rates will be stated in cents per 100 pounds.

The complainant, a corporation engaged in the junk and scrap-iron business at Fargo, N. Dak., handles from 300 to 700 carloads of material annually through its junk yard at that point. One shipment moved from Edgeley, N. Dak., to Fargo over the line of the defendant. It consisted of two old thrashing engines, one old gas tractor, and some pieces of iron, and was billed as scrap iron. Complainant's witness testified that the cylinders, flywheels, and gears of these engines were cracked or broken and the boilers rusted through, that they were in a generally dilapidated condition, and fit only to be scrapped. Upon arrival at Fargo the shipment was unloaded into complainant's yard, cut, melted, and otherwise further reduced to the small dimensions required by the trade description of scrap iron. When inspected by a representative of the Western Weighing and Inspection Bureau it was held not to consist of scrap

iron but of secondhand engines within the tariff description, and a rate of 18 cents was accordingly assessed instead of the scrap-iron rate of 12.6 cents. Defendant's tariff provides that scrap iron, but not secondhand engines, can be unloaded at Fargo and assorted upon payment of an additional 2 cents, and later an equal amount of similar tonnage, as shown by the shipper's transit balance, can be shipped out to Minneapolis, St. Paul, Superior, or Duluth, Minn., on the basis of the through rate, 15 cents from Edgeley, from origin to final destination. The result of the inspection was that complainant, which ultimately ships all tonnage of its Fargo yard to one of the Minnesota points named, was denied the benefit of the transit rate and arrangement on this shipment, and was required to pay inbound the local rate on secondhand engines, as stated. If we should find that the shipment was of scrap iron, the movement into Fargo would form a part of a through interstate shipment to one of the Minnesota points under the transit rate, and the measure of reparation would be the difference between the rates paid in and out of Fargo, on secondhand engines and scrap iron, respectively, and the through transit rate on scrap iron, and not the difference between the local rates on secondhand engines and scrap iron to Fargo, as claimed by complainant.

The other shipment was from Goodrich, N. Dak., and moved first to Fargo. It consisted of an old thrashing engine, parts of old binders and other farm implements, and some loose bones. Complainant's witness testified that this engine was in about the same condition as the others shipped from Edgeley. It is the practice of complainant, when pressed for storage space at Fargo and satisfied that engines are sufficiently scrapped, to reconsign to the Minnesota point instead of unloading into its yard at Fargo for further reduction to scrap, assortment, and shipment out later under the transit rate, and this car was so reconsigned to Duluth under defendant's tariff provision for reconsignment of freight generally. The consignee at Duluth was also a dealer in scrap iron and further reduced this shipment to scrap iron at its yard in Duluth. Upon reconsignment at Fargo complainant prepaid the charges through from Goodrich to Duluth at the rate of 17½ cents applicable on scrap iron. Upon inspection at Duluth by a representative of the Western Weighing & Inspection Bureau the contents, like those of the car from Edgeley, were held not to come within the tariff description of scrap iron. The inspector testified that the engine was in fairly good condition and capable of repair for secondhand use. The secondhand-engine rate of 26 cents on the engine and the junk rate of 17½ cents on the other articles were accordingly assessed on the basis of minimum weights of 20,000 and 30,000 pounds, respectively.

Prior to May, 1917, no question was raised by the carriers regarding the rate applicable on shipments such as these, and for several years prior to that time the rate on scrap iron was held to be applicable when the representative of the inspection bureau was satisfied that the engines were useful only to be scrapped. Every car was inspected then, as now, and the inspector had access then, as now, to all of complainant's books of account covering the purchase and selling price of every car of material handled through the Fargo yard, and all the facts relating to the inbound and outbound shipments.

Complainant has customarily had scrap engines broken up at the point of purchase wherever practicable. But such demolition there can ordinarily be effected only in part, at best, because complainant can not have at every point where an engine may be bought the equipment of electric-shears and acetylene-torch outfits used for the conversion of engines into scrap iron. The reduction process at origin is therefore usually limited to damage by hand sledge. The difficulty of complainant's situation in this respect is conceded by defendant, but it contends that, as a matter both of actual fact and of tariff construction, an engine continues to be an engine so long as it retains its engine form and until scrapped, even though concededly good for nothing but scrap iron, intended to be scrapped, and subsequently scrapped. It further contends that on such shipments the rate on secondhand engines must be applied, and that any impropriety in that designation and rate as applied to old engines should be corrected in an appropriate proceeding before the Commission upon a complaint in which the question is definitely raised.

These engines appear to have been, when shipped, "of value for remelting purposes only." To that extent they fell within the tariff description of scrap iron. They were later scrapped at destination. But whatever might be the proper conclusion as to the reasonableness of excluding them from the tariff description of scrap iron, if that issue were before us in an appropriate proceeding, they had not reached the stage of being the "scraps or pieces of iron or steel" contemplated by the present tariff description of scrap iron, and, as only the interpretation of that description is here presented for determination, it follows that the complaint should be dismissed.

This conclusion is not in conflict with *Joseph Iron Co.* v. *C. & L. R. R. Co.*, 49 I. C. C., 111, cited by complainant. There the pieces of worn-out cotton compress machinery, on which the scrap-iron rate was held to be applicable, came within the commodity tariff descriptive of "scrap iron and scrap steel, all kinds, except old rails suitable for relaying purposes," which was not confined, as this is, to scraps or pieces.

HALL, Commissioner:

To the foregoing report as proposed by the examiner complainant filed exceptions which do not point to any omission or error of fact.

The rate on scrap iron is published to apply "on scrap iron and scrap zinc, in packages or loose, straight or mixed carloads," and is specifically limited by a footnote providing that the rate "applies only on scraps or pieces of iron or steel of value for remelting purposes only." Complainant contends in its exceptions that the footnote does not qualify the description "scrap iron and scrap zinc," except by the words "of value for remelting purposes only." With this interpretation we do not agree. If it were correct, the restriction to "scraps or pieces of iron or steel" would be superfluous. Nor can it fairly be said that a set-up engine is scrap iron "in packages or loose" within the meaning of the item quoted.

Complainant also contends in its exceptions that the restriction of the rate to "scraps or pieces" of iron does not require that these engines be dismantled in the absence of direct provision for dismantling, and that a set-up engine really consists of numerous "scraps or pieces" within the meaning of this tariff. These contentions fall of their own weight.

Another point made by the exceptions of complainant is that in *Joseph Iron Co.* v. *C. & L. R. R. Co.*, cited above, the pieces of worn-out cotton compress machinery on which we found the scrap-iron rate to be applicable were not broken up into pieces as required by the southern classification. The question there, as the proposed report shows, was governed by a commodity tariff which excepted the rate on scrap iron from the application of the classification rules, and under which the pieces of iron, as offered for transportation, were not required to be further broken up. The difference is in the tariffs.

The only issue before us is one of tariff interpretation. In that we agree with the examiner, adopt his proposed report as stated above, and make it part of this report.

An order will be entered dismissing the complaint.

No. 10368.

TOBACCO PRODUCTS CORPORATION ET AL.

v.

DIRECTOR GENERAL, SOUTHERN PACIFIC COMPANY, ET AL.

Submitted June 1, 1919. Decided August 1, 1919.

Rates on cigarettes in fiber-board boxes shipped in less-than-carload lots from New York, N. Y., to points in California, Oregon, and Washington, and the classification rule applicable thereto, found to have been justified. Complaint dismissed.

Allen McCarty for complainants.

R. C. Fyfe and *F. E. Andrews* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

The following is substantially the report proposed by the examiner and served upon the parties:

This complaint was filed on December 16, 1918, by the Tobacco Products Corporation and its subsidiary, M. Melachrino & Company, Incorporated, engaged in the manufacture and sale of cigarettes and other tobacco products in the city of New York. They attack as unreasonable, in violation of section 1 of the act to regulate commerce, the rates charged on various less-than-carload shipments of cigarettes from New York to points in California, Oregon, and Washington, which moved between September 13, 1916, and June 7, 1917.

Under the western classification, which governs, less-than-carload shipments of cigarettes in boxes conforming to the requirements of certain rules take the first-class rate; in boxes not so conforming, double first class. Commodity rates lower than first class would apply to this traffic if compliance were had with the classification rules as to preparation for shipment. One of these rules, which relates to shipments in fiber-board boxes but not in wooden boxes, is that the boxes must show "description of contents." Complainants' shipments were made in fiber-board boxes marked with the name of the shipper and, in addition, with abbreviated descriptions of the contents, as for example "5000 Milo CK 20's" without mention

of cigarettes. It was testified that this meant 5,000 cigarettes of the Milo brand, cork-tipped, in packages containing 20 cigarettes each. Other brands were indicated by the words Natural, Royal Nestor, and Melachrino. Defendants did not consider this marking a compliance with the rule as to description, and assessed double first-class rates. Complainants seek reparation and reasonable rates and rules for the future.

They contend that the marking of their shipments as described was a sufficient compliance with the tariff rule; that no similar rule as to description was operative in official classification territory; and that such a requirement as to shipments in fiber-board boxes, not made in case of similar shipments in wooden boxes, is unreasonable. They also point to the fact that in the case of certain other commodities, such as boots and shoes, dry goods, and furs, shipped in fiber-board boxes not conforming to the classification rules, the increase in rates on account of such nonconformity is but 25 per cent.

It may be, as stated, that the shipments of complainants are widely distributed and their nature generally well known, but it can not reasonably be held that such descriptions as were used are sufficient to meet the purposes of the tariff rule. The principal purpose is to inform the carriers' train and station employees of the nature of the commodities shipped, in order that due precaution may be taken in loading the packages and in storing them at stations to protect them from injury and pilferage. In this case, as in others before the Commission, it has been found that shipments of cigarettes are especially liable to loss from theft. *Reed Tobacco Co.* v. *C. & O. Ry. Co.*, 51 I. C. C., 201. Shipments of cigarettes in fiber-board boxes under the tariff rules may not exceed 90 pounds gross weight per package. Shipments of the same commodity in wooden boxes may be, and usually are, much heavier, and the boxes, prepared according to the carriers' requirements, offer much greater resistance to pilferers than do fiber-board boxes. The two kinds of containers were described more fully in *Reynolds Tobacco Co.* v. *A. & S. Ry. Co.*, 39 I. C. C., 371. The rule as to description carried in the southern classification is substantially the same as that in the western, and, effective October 1, 1917, a similar rule was incorporated in the official classification.

The rates and rules under attack are not found to have been or to be unreasonable and the complaint should be dismissed.

HALL, *Commissioner:*

No exceptions were filed to the foregoing proposed report of the examiner. Upon consideration of the record we approve and adopt it as part of this report, and find that defendants have justified the rates assessed and the rule.

An order will be entered dismissing the complaint.

No. 9842.

WESTERN PACIFIC RAILROAD COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted January 8, 1919. Decided July 1, 1919.

1. A lower basis of divisions of joint through passenger fares between points in the state of California and Salt Lake City, Utah, and points north and east thereof, accorded complainant, than defendants allow each other of similar joint fares, found to be unlawful, in violation of the second paragraph of section 3 of the act.
2. Reparation awarded.

Allan P. Matthew for complainant.

E. W. Camp, Fred H. Wood, and *C. W. Durbrow* for defendants.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

This case was the subject of a tentative report by the examiner which found the practices of the defendants discriminatory and proposed that an order be entered requiring the removal of the discrimination and denial of reparation. Except as herein modified the following statements of fact are those as set forth by the examiner. Exceptions, which will be discussed later, were filed by both parties.

From points in the state of California to Salt Lake City, Utah, and points north and east thereof and in the opposite direction, through routes and joint passenger fares are in effect. They apply from and to practically all points in California on the lines of each of the defendants, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company, hereinafter termed the Southern Pacific and the Santa Fe, by way of the line of the complainant, and from and to points in California on the line of the complainant by way of the lines of each of the defendants. However, the divisions of such joint through interstate passenger fares in which the complainant participates with each of the defendants are less than the divisions of similar joint fares which defendants accord each other. Complainant, invoking the second paragraph of section 3 of the act to regulate commerce, alleges that each of the defendants discriminates in its rates and charges against the connecting line of complainant in favor of each other as a connecting line. The prayer is for the removal of the alleged discrimination pursuant to the

stated provision of the act, and reparation within the statutory period. In their answers each of the defendants admits that it does not provide for the division of such joint passenger fares between it and the complainant upon the same basis as it divides fares with each other, but denies that it thereby discriminates in its rates and charges between such connecting lines.

To avoid obscurity of issue, those matters which are not in issue are eliminated. The divisional arrangements assailed are those for the apportionment of fares from and to Salt Lake City, and north and east thereof, applicable to the transportation of transcontinental passengers and do not apply west of Salt Lake City. The fares *per se* are not attacked; in fact, no carriers other than the two named are parties defendant, although other carriers join with the complainant and, also, with each of the defendants in the fares the apportionment of which is alleged to constitute discrimination. None of the fares was prescribed by the Commission. They were voluntarily established by the parties to this case and their connections. The apportionment of such fares is by agreement between the parties to the through fares.

No evidence was offered on behalf of complainant to show that the physical facilities for the interchange of passengers between the line of the complainant and each of the defendants are different from those for the interchange of passengers between the defendants. On the contrary, the joint fares are the same in amount whether the transportation of a passenger is by way of the line of the complainant and each of the defendants, or by way of the lines of the defendants. The physical facilities for the interchange of passengers at San Francisco and Stockton, Calif., for example, are identical whether the interchange is between the complainant and the Southern Pacific or Sante Fe, or between the Southern Pacific and the Sante Fe. The practices followed by the defendants for the receiving, forwarding, and delivering of passengers of complainant are not different from the practices of the defendants in the receiving, forwarding, and delivering of the passengers of each other. The public has not complained of any unreasonable, improper, or unequal facilities. The sole inequality is the lesser proportions of the joint fares allowed complainant by each of the defendants than they accord each other.

The complainant does not invoke the provisions of section 15 of the act, which authorizes the Commission to prescribe divisions of joint rates. The prayer is for the removal of discrimination pursuant to section 3 of the act. No order is prayed for the establishment of specific divisions; but that the divisions received by complainant shall not be less than those made and received by defendants from each other.

We are confronted at the outset, however, by a plea, on behalf of the defendants, to our jurisdiction to entertain the complaint. They relied on the case of *Morgantown & Kingwood Divisions*, 40 I. C. C., 509, and claimed that our power to prescribe divisions of joint rates rests in and is confined to section 15 of the act; that that power is limited by the terms of that section to cases in which the Commission, having prescribed joint rates, fixes the division because the parties to such joint rates have disagreed as to their apportionment. As the facts prerequisite to the Commission's jurisdiction obtaining under the joint-rates-and-through-routes provision of section 15 of the act do not here obtain and no other section invests the Commission with power over divisions, defendants contend the relief asked must be denied. And as there is no inequality in the physical facilities for receiving, forwarding, and delivering passengers, defendants assert the complaint must be dismissed. But pending argument of the case at bar, the Commission, upon rehearing, reversed the above cited case, 49 I. C. C., 540. Notwithstanding this fact defendants at argument endeavored to sustain their former contentions.

The through routes over which some of the joint fares apply embrace substantially less than the entire length of the lines of railroad of the defendants which lie between the termini of such through routes and, apparently, through routes embracing the entire length of defendants' lines between the termini would not be unreasonably long as compared with other practicable through routes which could otherwise be established. For example, the San Francisco-Ogden line of the Southern Pacific is shorter than the line of the complainant from San Francisco to Salt Lake City and the two lines parallel each other between Winnemucca and Wells, Nev. Therefore, as the Commission's authority is defined by the statute and can not be enlarged by the fact that the defendants have seen fit voluntarily to short haul themselves in the establishment of joint fares in connection with the through routes over the line of the complainant, *The Ogden Gateway Case*, 35 I. C. C., 131, 140, defendants argue that they could cancel the joint fares and the Commission would be without authority to require their restoration and, hence, could not prescribe any divisions whatever. But we think these arguments are without the issue: Whether or not there is in fact discrimination in the rates and charges between the connecting lines?

The expression of rates and charges in the form of divisions makes them none the less rates and charges which may be discriminatory. The second paragraph of section 3 not only requires that every common carrier shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective

lines" but in addition requires that when such equal facilities are afforded, there shall be no discrimination in the rates and charges. The power to remove a discrimination does not necessarily involve the power to prescribe; the order of removal normally operating in the alternative. A carrier might, through stress of competition or other compelling force, establish a lower rate than the Commission would find normally reasonable or could require to be established. Nevertheless, if such a rate, without the power of the Commission to prescribe, engendered discrimination, the Commission's power to require the discrimination to be removed operates irrespective of its lack of power to fix the rate. *Harbor City Wholesale Co.* v. *S. P. Co.*, 19 I. C. C., 323, 329; *In Re Wharfage Charges of the Galveston Wharf Co.*, 23 I. C. C., 535, 547; *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I. C. C., 384, 391; and *Commercial Cable Co.* v. *Western Union Telegraph Co.*, 45 I. C. C., 33.

The bases of divisions between the complainant and the Southern Pacific apply on both eastbound and westbound traffic. Fares or proportions of fares which are the sum of fares to and from the interchange points are so divided, except that on traffic from Salt Lake City and points basing thereon to points on the Southern Pacific, the minimum proportions of $6.25 of first-class fares and $5 of second-class fares will accrue where the Southern Pacific's local from the point of interchange is less. Fares or proportions of fares which are less than the sum of fares to and from the interchange point are divided on a pro rata per rate basis—that is to say, each of the defendants receives as its division of such fares such proportion thereof as its separately established fare to or from the interchange points bears to the sum of the separately established fares. The above-stated general basis is subject to certain exceptions in respect of reduced fares issued for charitable purposes; to the clergy; for transportation to soldiers' homes; to immigrants; and the like, and to the further exception that the Southern Pacific requires a minimum proportion of 50 cents in each direction on first and second class tickets, one way or round trip, sold at regular, colonist, or special fares, for passengers interchanged between the complainant and it at San Francisco, when the initial point is Ogden, Salt Lake City, or any point east or north thereof and the destinations are San Francisco Bay points, such as Alameda, Berkeley, and Oakland, Calif.

The bases of the divisions between the complainant and the Santa Fe are the same as those with the Southern Pacific. The general bases of divisions between the defendants are the same as those between the complainant and each of the defendants, except that neither of them exacts a minimum proportion from the other. The

fares are divided upon a pro rata per rate basis when less than the sums of local fares, and fares or proportions which are the sum of fares to and from the interchange point are so divided.

Complainant submitted several maps graphically illustrating the divisional adjustments between it and each of the defendants. It is unnecessary to detail all of the instances cited. The following tabular statement will suffice to show the practical result of the operation of the general bases for dividing the joint fares, those from San Jose, Calif., a point local to the Southern Pacific, to Kansas City, Mo., being taken as representative:

	First class.	Second class.	Nine months' round trip.	Summer excursion, round trip.
San Jose to Kansas City	$50.00	$50.00	$90.00	$67.50
Minimum proportions required of complainant via San Francisco and via Stockton	6.25	5.00	12.50	12.50
Proportion if routed via Santa Fe:				
Via San Francisco	1.22	1.22	2.43	1.54
Via Stockton	2.34	2.32	4.64	2.91

The Southern Pacific's local fare from San Jose to San Francisco, distance 47 miles, is $1.25 per passenger. The same line's local fare from San Jose to Stockton, distance 80 miles, is $2.45.

The line of the complainant is from San Francisco to Salt Lake City, 927 miles. There are practically no branches except a short one from Beckwith to Loyalton, Calif., and one, purchased from the Nevada-California-Oregon Railway Company, from Hackstaff, Calif., to Reno, Nev., which was not in operation by complainant at the time of the hearing. Connections of the line of the complainant with those of the Southern Pacific are made to Marysville, Sacramento, Stockton, and San Francisco, Calif., and passengers are interchanged with the Southern Pacific at Marysville and Sacramento. The Santa Fe interchanges passengers with the complainant at San Francisco and Stockton. The Southern Pacific interchanges passengers with the Santa Fe at San Francisco, Merced, Stockton, Fresno, and Los Angeles, Calif. At Salt Lake City complainant's line connects with the lines of the Denver & Rio Grande Railroad and the Union Pacific Railroad companies, by ways of which connections are made with other eastern and western carriers.

The lines of the Southern Pacific Company extend from Portland, Oreg., and Ogden, Utah, to and through San Francisco and Los Angeles, Calif., to El Paso, Tex., and thence to New Orleans, La.

The lines of the Santa Fe are from Chicago, Ill., Galveston, Tex., Los Angeles, and San Francisco, and run through the states of Illi-

nois, Missouri, and Kansas to Denver, Colo.; through Oklahoma and Texas and through New Mexico and Arizona.

Between the termini of complainant, San Francisco and Salt Lake City, there are no important commercial communities, producing a considerable volume of passenger traffic, which are not also served by the San Francisco-Ogden line of the Southern Pacific. Complainant's only exclusive territory is between Oroville, Calif., and Winnemucca, Nev., and between Wells, Nev., and Salt Lake City. The towns between Oroville and Winnemucca are very small, none exceeding a thousand inhabitants and there are no communities of much importance, from a passenger producing standpoint, between Wells and Salt Lake City. On the contrary, the lines of each of the defendants, particularly that of the Santa Fe, through the populous states of Illinois, Missouri, Kansas, Oklahoma, and Texas, and, notably, the Shasta route of the Southern Pacific from Chico, Calif., to Eugene, Oreg., are geographically so situated that they may and do produce a large volume of passenger traffic.

In addition to the passenger-producing territory of the middle west, the lines of the Santa Fe alone serve Santa Fe and Albuquerque, N. Mex., Prescott, Ariz., the Grand Canyon of the Colorado, and San Diego, the second largest city in southern California. The rails of the Southern Pacific exclusively serve Red Bluff and Redding in the Sacramento Valley of California; points in the San Joaquin Valley of California, and cities on its coast line, such as San Jose, San Luis Obispo, Monterey, Santa Cruz, and Santa Barbara. Notwithstanding the Santa Fe has its own rails from San Francisco to Los Angeles, it nevertheless transfers a considerable volume of its San Diego passenger traffic to the line of the Southern Pacific at Los Angeles, although it thereby utilizes but a portion of its mileage between the termini. Similarly, the Southern Pacific transfers passenger traffic to the Santa Fe originating at Santa Barbara, San Jose, Sacramento, and other points in California, and thus short hauls itself to the advantage of the Santa Fe. These and other instances were cited of record where each of the defendants accept the short haul, reciprocating treatment in kind by the other.

The population of local points in California and Oregon served exclusively by the lines of the Southern Pacific is very much greater than the population of local points in California, New Mexico, and Arizona served exclusively by the lines of the Santa Fe. But data of the interchange of passengers for a given period between the defendants and between the complainant and the Southern Pacific more accurately demonstrate, than can a recital of defendants' exclusive territories, the relative advantages of reciprocity between the

defendants as compared with its comparative lack in the interchange of passengers between defendants and complainant. For example, during the four months of February, May, August, and November, 1916, the Southern Pacific interchanged 12,713 passengers, exclusive of those making the circle tour, at California gateways with the complainant and the Santa Fe, from and to territory east of Helena and Butte, Mont.; Ogden and Salt Lake City, Utah; Albuquerque, N. Mex.; and El Paso, Tex., for the transportation of which the revenue of the Southern Pacific was $131,609. The totals were composed of the following classes of tickets and were divided between the complainant and the Santa Fe, as follows:

	Interchanged with complainant.		Interchanged with Santa Fe.	
	Passengers.	Revenue, Southern Pacific.	Passengers.	Revenue, Southern Pacific.
First class	342	$3,470	1,237	$15,816
Second class	1,054	8,538	1,829	19,256
Nine months	168	1,548	3,871	48,446
Summer tourist	757	4,748	3,457	29,787
Total	2,321	18,304	10,394	113,305

Of these total passengers the minimum proportions accrued to the Southern Pacific on 46 per cent and its revenue on that percentage was 35 per cent of the total proportion paid to it by the complainant. So far as the classes of passengers were concerned, the minimum proportion accrued to the Southern Pacific, on first-class and the nine months' ticket, on only 9 per cent each, and on but 16 per cent on second class. The minimum of $6.25 accrued on 98 per cent of the summer tourists tickets due to the fact that a pro rata per rate division on traffic via Los Angeles, Calif., would yield 25 cents less or $6. The revenue received by the Southern Pacific from passengers interchanged with the Santa Fe during the four months' period averaged, for first class, second class, all-year tourist, and summer-excursion fares, $10.90; while the average received from the complainant, during the same period upon the same classes of tickets, was $7.88.

Certain lines refuse to receive passengers at junction points which would result in their being short hauled. This course is followed by the Pennsylvania Railroad Company at Pittsburgh and Philadelphia, Pa. Other lines require a minimum proportion of the joint fares irrespective of the amount of their local fare. Practically all lines in the United States demand their local fare as a proportion of the joint rates in instances where they are short hauled. The

complainant in the through route over which the joint fares apply is not short hauled, but defendants are in many instances. Nevertheless, as we have seen, on a majority of the passenger traffic interchanged between complainant and the Southern Pacific, the higher percentages of the division of the fares are upon a pro rata per rate basis yielding less than the local fares of the Southern Pacific. For instance, on traffic from the Missouri River to Los Angeles, by way of the line of the complainant to San Francisco and the Southern Pacific thence, the divisions of the latter company are 78.14, 60.85, 76.26, and 44.64 per cent of its local fares for first-class, second-class, all-year tourist, and summer-tourist tickets, respectively.

Notwithstanding, however, the refusal of some carriers to receive passengers at short-haul junction points, to require minimum proportions or their local fares in instances where they are short hauled, their practices are uniform as to all connecting carriers. The complainant is differentiated in the divisional arrangements from other connections of defendants. The divisional arrangements between it and the Southern Pacific is not maintained between the Southern Pacific and any other transcontinental carrier. For example, the Salt Lake Route—that is, the Los Angeles & Salt Lake Railroad Company—has a main line of 785 miles, 142 miles less than that of the complainant, from Salt Lake City to Los Angeles; does not serve any important passenger-producing territory; traverses the desert from southern Utah to San Bernardino, Calif., and, nevertheless, possibly because, among other reasons, 50 per cent of its capital stock is owned by the Union Pacific Railroad Company, which delivers more traffic to the Southern Pacific than any other carrier, the divisional arrangements with the Southern Pacific are upon a pro rata per rate basis.

Emphasizing the geographic, operating, and traffic conditions which have been detailed, it is the contention of the defendants that there is a marked dissimilarity between the interchange arrangements existing between defendants and those existing between each of the defendants and the complainant. They assert that it must be held that the divisional arrangements in effect between the complainant and each of the defendants are justified from the standpoint of public policy; that they are unusually favorable to the complainant, and that they are the concession made by a strong line to a weak line; whereas the divisional arrangements between themselves are reciprocal and mutual. But complainant contends that the defense of reciprocal services, although repeatedly urged, has been rejected as frequently as it has been urged. *Buffalo, Rochester & Pittsburgh Ry.* v. *Pennsylvania Co.*, 29 I. C. C., 114;

Pennsylvania Co. v. *United States*, 236 U. S., 361, 365. In the latter decision the Supreme Court of the United States used the following language:

> We agree with the Commission and the court below that the alleged reciprocal shipping arrangements do not remove the discriminatory character of the treatment of the Rochester road.

Complainant contends that if the reciprocity argument which the Commission has condemned as open to serious objection because of its indefiniteness and its tendency to lack of uniformity as compared with the other theory that the charges for any given service should be established to secure a proper return for it considered by itself, should gain a foothold, the requirement of equal treatment of connecting carriers would be completely devitalized. Counsel for complainant says:

> It would always be possible to differentiate the case of two connecting carriers upon more or less specious pretexts. The weaker line would invariably be the object of discriminatory practices.

It is immaterial in this connection whether the complainant is a weak or a strong line; that is not an essentially determinative factor in deciding discrimination. On the contrary, the act to regulate commerce was primarily designed to protect the weak in the right of equal treatment under like circumstances, which might otherwise be denied them. The public is not ordinarily interested in, injured by, or benefited from a difference in divisions between connections, but the connecting line is subjected to discrimination if the circumstances and conditions in regard to it are like those obtaining in respect of another connection and the rates or charges it receives are different from those of that other connection. There is nothing here to offset the likeness in circumstances and conditions of carriage as between the complainant as a connecting line and each of the defendants as connecting lines of each other. The mutuality of reciprocal advantages at other points as between defendants does not change the substantial likeness of the traffic interchanged between complainant and each of the defendants and that interchanged between defendants.

The minimum proportions were in effect during the two years immediately preceding the filing of the complaint herein, and passenger traffic interchanged between the complainant and each of the defendants was subject thereto. These divisions were paid by the complainant to each of the defendants.

The defendants except on the following grounds: 1. The Commission is without authority to regulate the divisions of rates voluntarily established by the carriers. 2. Section 3 does not apply to the division of joint rates. 3. The Commission may not prescribe the

division of joint rates and fares voluntarily established over routes via which it is without authority, under the limitations of section 15, to require the maintenance of joint rates. 4. No undue discrimination results from relative basis of divisions in question. The complainant excepted because the examiner did not propose an award of reparation.

The complainant is here seeking relief under the provisions of the second paragraph of section 3 of the act, which reads as follows:

> Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

It is to be observed that at the time the complaint was filed the Commission had held that divisions of joint rates could not be prescribed unless there had been a finding that the joint rate, division of which was sought, was reasonable. The only remedy at the time was under the paragraph of section 3 invoked, and the only complete remedy at this time would appear to be under that provision.

The question thus raised is one of the proper meaning and application of the statute. The paragraph in question is one connected, comprehensive provision of statutory law. The language relates to the same subject matter, and defines the duties of one carrier to another in the particulars mentioned. It first declares the duty of common carriers to afford all reasonable, proper, and equal facilities for interchange of traffic between their respective lines, and for receiving, forwarding, and delivering traffic to and from their several lines and those connecting therewith; and, secondly, declares that they shall not discriminate in their rates and charges between such connecting lines. The statute, therefore, embraces the imposition of an affirmative duty to interchange and forward traffic between connecting lines, and a prohibition that there shall be no discrimination in rates and charges between such connecting lines. There is no escape from the plain intent of these enactments. Reasonable, proper, and equal facilities must be afforded for the affirmative duty, and there must be no partiality or injustice in the terms and conditions upon which the duty is performed—in other words, no discrimination in rates and charges. All parts of this provision are of equal authority and obligation. They are the mandate of the same source of power, and it must be assumed that they are intended to have full and complete effect. Giving effect to the plain and clear provi-

sions of the law the right of the complainant to bring its complaint and have the question of discrimination determined is undeniable. The contentions of defendants to the contrary are without force.

The section does not attempt to define the various aspects which the prohibited discrimination might assume. Wherever and whenever the discrimination is practiced as between carriers and connections in cases with respect to which the service is rendered under the same circumstances and conditions unlawful results follow.

We have said many times that ordinarily the passenger or shipper is not interested in the division of joint rates between carriers. It has appeared in many cases before us and is a matter of common knowledge that carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of the line haul which they could perform. Carriers that are disadvantageously located are frequently willing to accord liberal divisions in order to be permitted to share in traffic to or from a point reached only by a competitor. It can not, however, be said that the carrier having the strategical advantage may lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms in the competitive traffic and at the same time demand from another connection for the same service in movement of the same competitive traffic a division so high as to make it impossible for it to share therein on a compensatory basis. In other words, if the carrier having the strategical advantage were to admit one competitor to share in the traffic and exclude another by refusing to enter into any arrangement with it, or effect the same exclusion by exacting divisional arrangements which would prohibit participation by that connection in the traffic, the discrimination would be unlawful.

The defense offered for the discrimination in the instant case is reciprocity between defendants which is more advantageous to them than a similar reciprocity between them and complainant would be. This defense was offered and rejected in *Buffalo, Rochester & Pittsburgh Ry.* v. *Pennsylvania Co., supra.* It was urged before and rejected by the Supreme Court in *Pennsylvania Co.* v. *United States, supra.* The plea has no more force here than it had there. Each of the defendants might stand upon its rights under section 15 of the act and decline to join with other carriers in through routes and joint fares where such routes embrace substantially less than its entire line between the termini thereof. This they have not elected to do with each other or with the complainant. Having elected to join in through routes and joint fares with complainant, they can not be heard to say that possibilities of reciprocity as between themselves and smaller possibilities of reciprocity as between

each of them and complainant justify the discrimination complained of. The discrimination against complainant shown in this case is patent. It is unjust and unlawful and should be removed.

Since the filing of the complaint the federal government assumed control of the lines of the parties to this proceeding. The Director General has not been made a party defendant. The through joint fares have been increased since the case was heard and submitted. There is, however, no question in this case as to the reasonableness of the joint fares. We proceed to the question of reparation. The examiner proposed that no reparation be awarded for the reason that no damage had been shown.

The provision of law is that there shall be no discrimination in rates and charges between connecting lines. The discrimination for the future might be removed by a readjustment of the divisions so that as between the complainant and defendants they would be the same. Whether the Commission would find that a division of joint fares to defendants of four or five times their local fares to junction points would be reasonable for the complainant in any event is not here for determination. But it may be assumed for the purpose of the statement that on this record the discrimination might be eliminated by raising the divisions as between the defendants without reducing those exacted of the complainant. If because of this we do not have power to right the results of the unlawful discrimination for the past, the law is then impotent to afford this complainant any relief. If we take that view of the law, then it is a vain thing to find that complainant was discriminated against in the past. No matter how the discrimination may be removed as to the future, the complainant is here asserting that during the past it was deprived of money which under the law it was entitled to.

If complainant was discriminated against, and we have found that it was, there was a violation of section 3 of the act. Sections 8 and 9 of the act give complainant a right of action for damages against the defendants and confer the right of applying to this Commission for an order awarding damages. If the damage alleged is directly due to a violation of the act, the award follows as a matter of course. The measure of the damage in this case is the reasonable division of passenger fares during the period in question as contrasted with the divisions received. We have found that the division fixed upon was discriminatory. In other words, the complainant in this case has been unlawfully deprived of money it otherwise would have possessed. The statement of the fact establishes the damage. The amount of the damage is demonstrable and does not depend on any contingency, such as the results of competition which may arise in the case of discrimination in the trans-

portation of property. The complainant, because of the unlawful practices of the defendants, was placed in an unfavorable and unjust situation with respect to passengers transported by it between points in California and Salt Lake City as compared with its competitors. Had it been placed in the same situation as its competitors it would have received more money for each passenger transported.

The divisions of passenger fares as between the defendants and other connecting lines in the same general territory, on competitive business were upon a pro rata per rate basis. There is a very strong presumption that such a basis of division is just and reasonable. There is no evidence in this record to overcome that presumption. The reasons given by defendants to justify the discrimination shown are, as above stated, wholly inadequate.

Under the circumstances shown we are of opinion and find that complainant has been damaged by the discriminations in divisions of passenger fares exacted from it on passengers transported between points in California on defendants' lines by way of complainant's line and Salt Lake City, Utah, and points north and east thereof; and that the amount of its damage is represented by the difference between what it would have received had the divisions been upon a pro rata per rate basis and the amount it did receive under the divisional arrangements in effect.

The exact amount of the damage can not be determined upon this record and the complainant should prepare a statement showin the details of the transportation of passengers in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an award of reparation.

CLARK, *Commissioner*, dissents to the award of reparation, but concurs in the remainder of the report.

EASTMAN, *Commissioner*, concurring:

At the time when this complaint was filed the Commission had held in *Morgantown & Kingwood Divisions*, 40 I. C. C., 509, that it is without power under section 15 of the act to regulate commerce, upon complaint and against the protest of a participating line, to prescribe the divisions of voluntary joint rates, and that it possesses such power only in the case of joint rates established by its order. This decision has since been reversed, 49 I. C. C., 540, but it stood at the time of the filing of the complaint herein and until, indeed, the case had been submitted. It is possible, as has been suggested, that complainant might have sought its remedy under section 15 by resorting to the somewhat heroic expedient of canceling the existing joint fares, but the fact that an alternative remedy may have

existed can not excuse us from affording such relief as may lawfully be granted under section 3, which was invoked.

The second paragraph of section 3 requires every common carrier subject to the provisions of the act to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith," and enjoins them from discriminating in their rates and charges between such connecting lines. The principal doubt which has been raised as to the interpretation of this provision in the present instance relates to the meaning of the words "rates and charges." It has been urged that they can not properly be construed to include divisions of joint rates or fares. A division in this sense is merely the compensation which a carrier receives for its portion of a joint haul, and the fact that one carrier acts as the agent of another in the collection of this compensation, so that the passenger or shipper is not obliged to make separate payment to each, does not make the division any the less a charge for the service rendered, although perhaps not a "charge" within the meaning of certain provisions of the act. However, this is beside the point, for if a carrier refuses without just cause to make a joint fare with one connecting carrier upon as favorable a basis as with another, which is in substance the allegation in this complaint, it is, I believe, discriminating in its joint "rates and charges," contrary to the provisions of the paragraph in question. In other words, a division is a part of a joint rate, and any discrimination in divisions necessarily springs from discrimination in the adjustment of the joint rates to which they belong.

Incidentally, the assumption that passengers and shippers have no interest in the division of joint rates or fares between carriers is not well founded. No carrier, in the long run, can properly serve the public unless its credit is good, and this involves the earning of a reasonable return upon investment. If it secures less than adequate compensation from a portion of its business, obviously its credit will suffer unless an undue burden is imposed upon other traffic. If one carrier succeeds in withholding from another its fair share of joint rates or fares, it needs no argument to prove that the latter will be harmed, and that the public in the end will suffer also. It follows that fair dealing in the relations of carriers with each other is as much a matter of public concern as fair dealing in their direct relations to passengers and shippers, and this, I think, is recognized by the law. In the *Tap Lines Cases*, 234 U. S., 1, 28–29, the Supreme Court said:

> Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as

such entitled to participate in joint rates with other common carriers, that determination falls far short of deciding, indeed, does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawfully discriminatory practices resulting in favoritism and unfair advantage to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear.

In the present instance there is no dispute over the fact that the defendants deal differently with the complainant in the matter of joint fares than they do with each other. The question at issue is whether the differentiation is without just cause, so that it amounts to discrimination. It appears that while the Southern Pacific short hauls itself in participating in through rates with the complainant, there is similar short hauling in the case of certain through rates in which defendants join with each other and with other carriers, and in none of these instances is this used as a basis for divisions such as are exacted from complainant. The sole reason for differentiation, upon analysis, appears to be the matter of reciprocity. It is alleged that defendants make mutual concessions to each other which offset and balance in the aggregate, but that complainant is so disadvantageously situated that it can offer no reciprocal advantages and hence must compensate for the privilege of through routes in the division of the joint fares.

The Los Angeles & Salt Lake Railroad Company, like the complainant, has no reciprocal advantages to offer, yet the Southern Pacific makes joint fares with it upon the usual basis, and no evidence was submitted that either of the defendants exacts from any other connecting carrier divisions of fares such as it exacts from complainant. Aside from this circumstance, the theory of adjusting a matter like this upon the basis of reciprocal concessions is, I believe, unsound. It is essentially the theory upon which rebates to large shippers were justified in the past. The difficulties in the application of such a theory were set forth by the Commission in *Buffalo, Rochester & Pittsburgh Ry.* v. *Pennsylvania Co.*, 29 I. C. C., 114, as follows:

If the defendant, notwithstanding the command of the law above quoted to afford all reasonable, proper, and equal facilities for the interchange of traffic between it and connecting lines and for the receiving, forwarding, and delivering of property to and from its lines and lines connected therewith, without discrimination as to rates and charges as between its connections, can justify the practice of inequality here shown because of reciprocal services performed at other and distant places by some of the carriers having connection with its line at New Castle, it would then seem to be necessary to determine the extent and measure of those services performed at such other places by each carrier and the value thereof to the defendant, a manifestly futile undertaking involv-

ing indefinite, uncertain, and speculative and, as we think, irrelevant questions and considerations as to the value of this and that service and the varying cost of performing it at many and remote places, impossible of satisfactory and reliable determination.

It may be that defendants could lawfully withdraw entirely from participating in through routes with complainant, although under all the circumstances this is open to doubt. But so long as they do participate in such through routes they can not, it seems to me, properly insist that circumstances entirely extraneous to the joint haul shall be a guiding factor in determining the share of the compensation which each carrier shall receive for its portion of the service performed. While the circumstances in *Pennsylvania Co.* v. *United States*, 236 U. S., 351, were not in all respects similar, the principle therein endorsed by the Supreme Court can with propriety be applied to the present situation.

The conclusion is that defendants have violated section 3 by discriminating in their rates and charges between connecting lines, without just cause dealing differently with complainant in the matter of joint fares than with other connecting carriers. If complainant has been damaged by this violation, it is entitled to reparation, but it does not follow of necessity that such damage has occurred. No traffic has been lost to complainant by reason of the discrimination, and the fact that defendants have accorded each other a more favorable basis of divisions involves no damage to complainant if its own more meager divisions have at the same time afforded reasonable compensation for the service rendered. The real question, so far as damage is concerned, is whether the divisions which complainant has received have in themselves been so low as to be unreasonable.

While this issue was not raised in the pleadings, it was, I think, raised by the circumstances of the case, and the evidence now before us is sufficient for its determination without injustice to the parties. If it is believed that further evidence will throw a different light upon the situation, a rehearing may be sought. It now appears that joint fares are normally divided throughout the western territory upon the pro rata per rate basis, and, as defendants state in their brief, this basis "reflects relative service performed by each at the relative rates applicable on their local traffic." It is the basis upon which defendants divide joint fares with each other, and the only reasons offered for departing from it in the case of complainant are those which are considered and rejected above. Believing, as I do, that the joint fares in question should have been and should now be divided in relation to service performed, and without reference to extraneous circumstances and conditions, I am able to reach the

conclusion upon the present record that complainant's divisions in the past have been unreasonable to the extent that they have been less than the divisions which would have been accorded on the pro rata per rate basis, and that complainant is entitled to reparation accordingly.

DANIELS, *Commissioner*, dissenting:

The complainant had joined with the defendants in establishing through routes and joint fares applicable thereto. Dissatisfied with the basis of divisions which it had voluntarily agreed to accept, complainant, relying on section 3 of the act to regulate commerce, prays, not that any particular divisions be established, but for divisional arrangements between itself and defendants identical with those subsisting between the defendants themselves. Damage is alleged and reparation asked.

Complainant has chosen not to bring complaint under section 15 which in express terms empowers the Commission to prescribe divisions of joint rates. Complaint under said section could have been brought, as in *Rates on Lumber and Other Forest Products*, 31 I. C. C., 673. There a dispute over divisions admittedly led to the publication of tariffs which were suspended and ordered canceled. The carriers failing to come to an agreement on the divisions, the Commission fixed the divisions. In that case we said, referring to the original report:

> The Commission's report was confined to a denial of the suspended rates and the finding that the establishment of divisions is a continuing power, supplemental to the establishment of joint rates and dependent upon carriers' failure to agree upon the proportions thereof to be received by each.

This report was made October 6, 1914; and it can not therefore be urged that subsequent decision in *Morgantown & Kingwood Divisions*, 40 I. C. C., 509; 49 I. C. C., 540, prevented complaint from being brought under section 15. Complainant could at any time have invoked our jurisdiction under section 15 by filing a cancellation of joint fares with defendants, admitting that its action was due to disputed divisions, whereupon in the investigation following certain suspension of said cancellation, the fixing of divisions under section 15 would follow. Complainant's avoidance of bringing complaint under the section of the statute expressly provided and specifically applicable to divisions, and its choosing to lodge complaint under a section never theretofore employed for that purpose and only by construction, and in our opinion only by forced construction applicable thereto, is worthy of notice. The disregard of the explicit remedy in the statute and the quest of a novel or ambiguous one would

seem fairly to put upon complainant the burden of showing beyond doubt that its title to invoke section 3 is clear beyond controversy.

I am unable to agree that reparation should be awarded. I am inclined to doubt whether the evidence discloses a violation of section 3 of the act.

It is a matter of common knowledge that prior to federal control the railroads of this country have generally followed the practice of determining the divisions of joint rates by mutual agreement, usually in writing. Except as otherwise provided in section 15 of the act, divisions have been regarded by the carriers, as well as by this Commission, as a proper matter for bargaining between the interested lines. In determining the matter of divisions two railroads have stood in the position usually occupied by two contracting parties. Each is free to emphasize any particular advantage which is thought to support its claim for a relatively large proportion of the through charge. Thus, carrier A may be the only railroad serving an important coal-producing region. Carrier B, less advantageously located, may desire to share in this traffic. When the two carriers come to agree upon divisions it has been customary and has been adjudged by us as proper for carrier A to emphasize its advantageous location with respect to the traffic involved, and to contend for divisions that will properly reflect that advantage. Unless carrier B has some similar claim to advance it must accept relatively low divisions or withdraw from the traffic.

That the Commission has recognized the propriety of so arranging the divisions as to make them fairly reflect the relative advantages and disadvantages of the respective railroads is indicated by the following excerpts from reported cases:

> The phrase "the just and reasonable proportion of such joint rate to be received by each carrier" necessarily implies that it is the duty of the Commission in fixing divisions to take into consideration all the circumstances, conditions, and equities that are necessary to arrive at what is a fair and proper adjustment of the situation as between the two roads, and precludes the idea that joint rates must be divided between the participating carriers on a mileage or any other fixed basis. *Star Grain & Lumber Co.* v. *A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, 370.

> There are many considerations, concerning which the public is not interested, which carriers in making arrangements between themselves may take into account in fixing joint rates and divisions. For instance, one road in a through line may be so situated with respect to the movement of a particular kind of traffic, by reason of its location with reference to the points of supply and demand, or otherwise, that it is in a position to command a much more liberal allowance for its connections than it would be with respect to other kinds of traffic. On the other hand, another road may be under the necessity of accepting abnormally low divisions in order to participate in the traffic. *Board of Trade of Winston-Salem* v. *N. & W. Ry. Co.*, 26 I. C. C., 146, 150.

Even in the instant case the majority report concedes that—

> It has appeared in many cases before us and is a matter of common knowledge that carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of the line haul which they could perform.

and that—

> Carriers that are disadvantageously located are frequently willing to accord liberal divisions in order to be permitted to share in traffic to or from a point reached only by a competitor.

The majority report holds that section 3 may be so construed as to authorize us to equalize divisions, the position of the majority being that the part of that section making it unlawful for carriers to "discriminate in their rates and charges between such connecting lines" may properly be construed to include divisions of joint rates and fares. I believe this to be a doubtful construction. In transportation parlance "rates" and "charges" do not have the same meaning as "divisions." The words "rates" and "charges" commonly refer to the sums or amounts which shippers are obliged to pay for the transportation of their goods. The distinction may doubtless be made that "rates" are usually stated in cents per 100 pounds of freight, whereas "charges" usually indicate the lump sum which the shipper pays for a specific service, such as switching, spotting, or refrigeration. The word "fares" has the same meaning as "rates," except that it is applicable to passenger traffic and is stated in dollars and cents per passenger. The word "divisions" has a wholly different meaning, indicating the portions of joint through rates or fares agreed upon by carriers parties thereto, or established by regulatory bodies, as their respective shares of such rates or fares. That there is a clearly defined distinction between rates and fares, on the one hand, and divisions on the other, is shown by the act itself and by the decisions of the Commission. Thus the act requires that schedules showing all "rates, fares, and charges for transportation" must be filed with the Commission and kept "open to public inspection." Carriers may doubtless be required to keep the basis of their divisions, or their actual division sheets on file with the Commission, but the Commission itself has said that—

> ordinarily the divisions of joint rates are not published and are subject to change by mutual agreement of the carriers. *In the Matter of Restricted Rates*, 20 I. C. C., 426, 429.

The first point of difference, then, between "rates" and "divisions" is that the former must be filed and kept open for public inspection, whereas the latter usually are not filed in the same detail and are not required to be kept open to public inspection. The second point of difference is that shippers, though interested in

the amount of the rates, ordinarily have no interest or concern in the division of joint rates between participating carriers. *Interior Iowa Cities Case*, 28 I. C. C., 64, 73. A third point of distinction is that carriers are usually free to increase or reduce divisions at will and without consulting regulatory bodies or without observing statutory notice, whereas rate increases can not usually be so made. Because of these recognized differences in the meaning of the two expressions it seems to me improper to construe "rates and charges" to include "divisions," a conclusion which is supported by the consideration that section 3 was enacted primarily for the benefit of shippers. *Rahway Valley R. R. Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C., 191.

But assuming, for argument only, that the Commission may under section 3 require the removal of discrimination in the matter of divisions, the question arises whether, as a matter of fact, the complainant has shown unlawful discrimination to exist; and this raises the further question whether, in passing upon the matter of discrimination under the second paragraph of section 3, the Commission may exercise its judgment based on all the facts and conditions or whether any difference whatever in divisions, if they be regarded as "rates and charges," must be regarded *ipso facto* as discriminatory. The word "discriminate" as used in the act is not synonymous with "differentiate"; and whether or not unlawful discrimination exists must be decided by the Commission in the light of all the circumstances. If this were not so, a carrier would be obliged to make identical divisions to all connecting lines regardless of differences in cost and other divergent considerations. The Commission has held, in effect, that this would be improper, and that if, for example, the interchange of traffic between carrier A and a boat line costs more than the interchange of traffic with another rail line, carrier A may, in spite of the unqualified language of the second paragraph of section 3, impose a higher charge upon the boat line to cover such additional expense. *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I. C. C., 384, 393; *Inland Navigation Co.* v. *Wabash Ry. Co.*, 43 I. C. C., 588, 593; *Kansas City Missouri River Navigation Co.* v. *C. & O. Ry. Co.*, 34 I. C. C., 67, 74. In the last cited case it is said:

> If there be dissimilarity of circumstances and conditions attending the interchange of traffic with the navigation company compared with interchanges with the all-rail lines, defendants are entitled to be compensated for the greater expense, either by a larger division of the through rate or by a reasonable additional charge.

Unless and until appropriate application is made to this Commission under section 15 of the act to prescribe the just and reasonable proportion of joint rates or fares to be received by the carriers

parties thereto, the question of divisions is a matter to be determined by mutual agreement among the carriers.

In *Florida Mercantile Agency* v. *P. R. R. Co.*, 21 I. C. C., 85, 87, we said:

> There may be many reasons why a particular carrier would be willing to accept a very small proportion of a joint rate in order to secure business, and it is within its rights in bargaining with its connections for tonnage so long as it does not undertake to haul one class of freight at rates so low as to thereby burden other traffic.

In *Empire Coke Co.* v. *B. & S. R. R. Co.*, 31 I. C. C., 573, 579, we referred to divisions as "matters of agreement between participating carriers." In *Investigation of Transportation of Barley*, 24 I. C. C., 664, 667, the Commission stated in relation to the rates involved that "the divisions of the rates are matters of agreement and bargain between the carriers." And in *Topeka Traffic Asso.* v. *A. & V. Ry. Co.*, 27 I. C. C., 428, 436, the Commission said that "carriers participating in a joint rate may ordinarily agree upon such divisions as they see fit, provided the rate itself is just and reasonable."

It is thus evident that in passing upon the matter of divisions the relative advantages and disadvantages of carriers with respect to the traffic in question should be carefully weighed, and it would seem logically to follow that a carrier may not be held in violation of section 3 of the act merely on the ground that it fails to accord precisely the same basis of divisions to all railroads with which it interchanges traffic. That an exact equalization of the basis of divisions as between all connecting railroads is not contemplated by the act seems to have been recognized by the Commission, not only in the cases above cited but in *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, 662, where the Commission said that "what is a fair division between carriers is to be determined in each case upon the merits of that particular case."

The record shows that there is a marked difference between the Western Pacific on the one hand and the Southern Pacific and the Santa Fe on the other with respect to the general nature and extent of the territory served by them, the location of their lines, and the volume of passenger traffic originated by and interchanged between them. The Commission should, in my opinion, give careful consideration to these differences. with a view to effecting, not necessarily an exact equalization of the basis of divisions but an apportionment that fairly reflects the divergent conditions indubitably disclosed by the evidence.

It should be borne in mind that under the principle laid down in the *Ogden Gateway Case*, 35 I. C. C., 131, the Southern Pacific at

all times prior to federal control has been free to cancel its through routes and joint fares with the Western Pacific. The two lines parallel each other, the line of the Southern Pacific being shorter than that of the Western Pacific. By continuing its participation in through routes and joint fares with the Western Pacific, the Southern Pacific voluntarily short hauls itself, but under the principle announced in the *Ogden Gateway Case* the Commission could not require it so to do. These joint fares must therefore be regarded as a distinct concession on the part of the Southern Pacific, and that fact, no doubt, played a part in determining the basis of divisions here complained of. A different basis of divisions resulting from such an inequality of mutual advantages generally is not necessarily unlawfully discriminatory.

The majority report cites *Pennsylvania Co.* v. *United States*, 236 U. S., 351, as authority for the proposition that reciprocal arrangements at other points may not properly be taken into consideration in fixing divisions. The two situations, however, are quite dissimilar. There the question raised was undue prejudice resulting from the refusal to serve the Rochester company by physical interchange at one point while according to other carriers at the same point the physical service denied the Rochester company. Here the physical interchange is accorded at all points to the complainant, and it is the general financial basis of divisions of joint fares, not the service of physical interchange at any point, that is in issue. That case, however, did not involve the determination of divisions for retroactive application. In fact, no finding was made on the subject of divisions. A brief outline of the facts will readily distinguish that proceeding from the case at bar.

The facts are set out in the Commission's report in *Buffalo, Rochester & Pittsburgh Ry.* v. *Pennsylvania Co.*, 29 I. C. C., 114. The Buffalo, Rochester & Pittsburgh Railway Company, hereinafter designated as the Rochester company, operated a line of railroad from Rochester and Buffalo, N. Y., to New Castle and Pittsburgh, Pa. The Pennsylvania Company, defendant, owned and operated certain terminal facilities at New Castle, and numerous industries were located exclusively on its terminal tracks. The Pennsylvania Company accepted and transported in interstate commerce to the industries in question carload traffic received from three other railroad companies serving New Castle, imposing a certain switching charge for the service, but absolutely refused to accept from or deliver to the Rochester company carload shipments consigned to or shipped from these industries. In other words, the Rochester company did not have access to the industries located on the terminal tracks of the Pennsylvania Company. Violations of sections 1, 3,

and 15 of the act were alleged, and the establishment of through routes and joint rates was prayed. The Commission concluded that—

> the discrimination practiced by the defendant against the complainant at New Castle, as hereinbefore stated, is undue, unreasonable, and in violation of the act to regulate commerce.

and held that the refusal of the Pennsylvania Company to accord the Rochester company at New Castle "all reasonable, proper, and equal facilities" could not be justified because of "reciprocal service performed at other and distant places." The question of divisions was not discussed. There were no divisions to discuss, because no joint through rates with the Rochester company existed. What charge the Pennylvania Company might reasonably make for the terminal service was not involved, and no decision thereon was made. Whether the Pennsylvania might demand a higher division from the Rochester company than from the other companies was not involved, and no decision thereon was made. The Commission said, "There is no question before us as to how much is a reasonable charge for this service, and we express no opinion as to this." The only question passed upon was the right of the Rochester company to have the same access to the terminals of the Pennsylvania Company as was afforded to other carriers. The principal defense of the Pennsylvania Company was "that the railroad is not required to give up the use of its terminals to another company." The Supreme Court sustained the order of the Commission, but in the course of its opinion said:

> It is to be remembered that in the aspect which the case now presents, there is no question as to the terms which the Commission might prescribe, or the compensation which the Pennsylvania Company should receive for the service to be rendered. The sole question is whether the Commission exceeded its authority in requiring the Pennsylvania Company to cease and desist from what the Commission found to be a discriminatory practice.

And again:

> And as we have said, the question of compensation is not here involved, and what compensation the Pennsylvania Company might require from the Rochester Company is not now to be determined.

It would seem that neither the decision of the Commission nor that of the Supreme Court furnishes a precedent for the determination of the matter here presented, namely, whether a carrier may exact a higher basis of divisions from one carrier than from another if the circumstances and conditions of the general interchange of traffic are substantially dissimilar.

Conceding, for the purpose of argument, that the evidence discloses a violation of section 3, reparation should not be awarded.

The examiner in his proposed report found that there was no showing that complainant was damaged. It is well settled that in cases involving discrimination in rates as between different shippers reparation can not be awarded in the absence of proof of the fact and the measure of actual damage. The law does not assume that the shipper complaining of discrimination in rates is damaged by the amount of the difference between the rate paid by him and the amount of the rate paid by his competitor. And what is true of shippers alleging undue prejudice must be true of carriers complaining against their connections. The right of a shipper to damages as a matter of law in such instances was considered by the Supreme Court in *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S., 184. In that case, the Court said that complainant—

> * * * contends, however, that * * *, as matter of law, it was entitled to recover as damages the same rate per ton on all plaintiff's shipments as had been rebated any other person. * * *
>
> But, as said in *Parsons* v. *Chicago & N. W. Railway*, 167 U. S., 447, 460, construing this section (8), "before any party can recover under this act he must show not merely the wrong of the carriers, but that that wrong has in fact operated to his injury."
>
> The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. Those damages might be the same as the rebate, or less than the rebate, or many times greater than the rebate; but unless they were proved they could not be recovered. * * * It becomes necessary to inquire what the evidence shows was the injury inflicted or the damage sustained by the plaintiff in 1901 in consequence of paying rebates * * *,

It is found in the majority report that the complainant is entitled to reparation in the amount of the difference between the divisions received by complainant and those which it would have received on the basis agreed upon by the defendants for traffic interchanged with each other. In view of the fact that the reasonableness or propriety of the precise level of the divisions is not here brought in issue, and that no finding as to the proper level can be based on evidence of record, or on other than the presumption of the propriety of the rate pro rate basis, I question accepting as the measure of complainant's damage the precise difference between the two sets of divisions. The divisions accorded to a carrier may be so low as to render it incapable of performing its functions as a carrier, in which event the damage to it may greatly exceed the difference between the divisions received and those regarded by the Commission as reasonable and proper. On the contrary, the actual damage may be inconsequential. Or, the actual damage may be nothing at all, or even less than nothing, if the alternative to a low division which a connection may legally offer is the refusal to make any joint fares at all where parallel stretches of line and consequent short hauling are involved. This in-

dicates the necessity of requiring proof of actual damage, both the fact and the measure, as in the *International Coal Case.*

The conclusion of the majority that "if the damage alleged is directly due to a violation of the act the award follows as a matter of course" would seem to run counter to the holding that "before any party can recover under this act he must show not merely the wrong of the carrier, but that that wrong has in fact operated to his injury."

The record may be searched in vain for evidence showing that the complainant sustained actual damage. It did not lose a passenger by reason of the disparity in divisions, because the joint fares were identical via all central and southern routes. If the Santa Fe and the Southern Pacific had demanded of each other the same minimum divisions as they demanded of the Western Pacific, the latter would not have derived any benefit therefrom. As a practical matter should the Southern Pacific and the Santa Fe to-day make a readjustment of their books covering the period in question so as to make their divisions with each other the same as those with the Western Pacific, the cause of complaint would apparently disappear; but the complainant could derive no financial advantage from such a readjustment. To affirm, as does the majority report, that if complainant had been placed in the same situation as its competitors it would have received more money for each passenger transported, is to assume that on this basis of divisions joint through rates and the voluntary interchange of passenger traffic would have been accorded the complainant and that its passenger traffic would have been exactly as great as it actually was.

For the above reasons I am unable to agree with the conclusions of the majority.

HALL, *Commissioner*, dissenting:

To the statement by COMMISSIONER DANIELS of the law applicable to this controversy I have little to add. The majority report quotes the second paragraph of section 3 of the act to regulate commerce and correctly says that the question is one of the proper meaning and application of the statute. It says that the paragraph is one connected and comprehensive provision of statutory law, and holds that the prohibition against discrimination "in their rates and charges between such connecting lines" applies to the division between the carriers of their joint rates.

In this connection it should be noted that section 3, including this paragraph, has remained unchanged through all the amendments made since the original act was approved in 1887. Throughout the original act the terms "rates" and "charges" were recurrent and in every instance clearly referred to those exacted from the public. As

such they were and are required under section 6 to be embodied in tariffs published, posted and on file with the Commission. No such requirement was or is made as to the carriers' divisions of their joint rates and charges.

The original act gave the Commission no jurisdiction to establish through routes or joint rates, in case of disagreement, or to prescribe the division of those rates as between the participating carriers. Such jurisdiction was first conferred by the Mann-Elkins act, approved June 29, 1906, which complainant has not invoked in this case. In the meantime the Commission had construed the meaning of the second paragraph of section 3.

In *N. Y. & N. Ry. Co.* v. *N. Y. & N. E. R. R. Co.*, 4 I. C. C., 702, 720, it said:

> When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given it, and thus create a monopoly in favor of another competitor.

Here is plain declaration of the sole meaning of this paragraph. The complaints brought under it have usually been grounded on the contention that the complaining carrier was at a disadvantage in competing for traffic because the defendant carrier maintained through routes and joint rates, or facilities for interchange, in connection with another carrier, and refused to do so with complainant. In other words, a distinction had been made in rates or facilities for interchange which tended to coerce the public not to use complainant's line as part of the route of movement. The public ordinarily has no interest in the divisions of rates, and, as said in *Enterprise Transportation Co.* v. *Penn R. R. Co.*, 12 I. C. C., 326, the amount of such division is not necessarily determined by the amounts accepted by the carriers in connection with other lines.

Passing now to consideration of some pertinent facts in the case it will be observed that no denial of through routes and joint fares, or difference in charges to the public or in facilities for interchange of passengers, is alleged or proven; that no representative of the traveling public is here complaining; that the reasonableness of the division received by defendants out of the joint fares is not assailed, and that the sole ground of complaint is that each of the defendants exacts a minimum division from complainant which neither exacts from the other, in cases where the local, or the pro rate per rate basis, which is applied to all alike would not yield the defendant, out of the joint fares, as much as that minimum. That was, and is, the sole distinction in treatment which complainant seeks to have removed.

Cancellation of the minimum requirement would remove it. Application of that requirement in adjustment of divisions between the defendants would remove it. The majority report, in the absence of averment or proof, finds the minimum unreasonable to the extent that it exceeded and exceeds the local or pro rate per rate basis of division, as the case may be, and proposes to award reparation to that extent, in addition to finding that exaction of the minimum division by each defendant from complainant, but not from the other defendant, constitutes an unlawful discrimination under the second paragraph of section 3 which must be removed. With these conclusions I can not agree, and express my conviction that the Commission is without power to award reparation upon the record in this case.

The minimum assailed is that collected from the Western Pacific out of joint fares applicable to the transportation of passengers from Salt Lake City and points east and north thereof to California points, or from California points to Salt Lake City or beyond, and not to transportation wholly west of Salt Lake City, the eastern terminus of the Western Pacific. Except as to traffic originating at or destined to Salt Lake City passengers must be brought to or taken from that terminus by other lines, none of which has been made a party to this proceeding.

The defendants are the Southern Pacific and the Santa Fe. The former operates the Central Pacific line from Oregon to San Francisco as well as its own lines in California, its Shasta route to Portland, Oreg., and its line through El Paso, Tex., from the east. The Santa Fe takes over transcontinental traffic as far east as Chicago and its widely ramified system is one of the important passenger thoroughfares of the country. Both reach every important point in California on the rails of the Western Pacific, and many which the Western Pacific does not reach.

It thus appears that the geographical and competitive relation of these three lines is not the same or similar. The line of the Western Pacific so closely parallels the Central Pacific line of the Southern Pacific that for 300 miles it is within one mile of the latter line. By participating in through routes and joint fares with the former the latter voluntarily short hauls itself, although, under the doctrine of the *Ogden Gateway Case* we could neither compel it to do so nor require it to continue such participation if it should desire to withdraw therefrom. The Southern Pacific and Santa Fe compete, but each serves a large extent of territory, important in yield of passenger traffic, which is not served by the other. Their lines are so located as to supplement each other and in many instances each is a necessary and important connection of the other. The Western

Pacific supplements neither, in any practical sense, and affords to neither any traffic possibilities of consequence. Each defendant short hauls itself on some traffic interchanged with the other but it is apparent, from their location, as shown in the majority report, that they interchange a considerable amount of traffic for which, if they declined to interchange, we could require the establishment of through routes and joint fares. Not so with the Western Pacific. Traffic which the law requires to be interchanged under joint rates can hardly be assimilated to traffic not subject to that requirement. In the majority report weight seems to be given to the divisional arrangement in effect between the Los Angeles & Salt Lake Railroad and the Southern Pacific, but no complaint is made that the former is unduly preferred.

It is only for a haul in California that the minimum division accrues from complainant to either defendant and then only when its haul is so short from or to its point of interchange with complainant's line that its local fare for that distance, or its pro rate per rate, as the case may be, would amount to less than the minimum. As the distance from the point of interchange increases the excess of the minimum division over that accruing on the local, or pro rate per rate basis, dwindles until it disappears at approximately 200 miles from the point of interchange. The first table in the majority report takes San Jose as a representative point of origin and contrasts the minimum of $6.25 exacted from complainant by the Southern Pacific for that haul with the local of $1.22 which it receives from the Santa Fe for the same haul. San Jose is only 45 miles from San Francisco, 80 from Stockton, and can hardly be called a representative California point of origin when the length of that state is considered. But, retaining San Jose as point of origin, the table has been revised to include Los Angeles, a point not less important than San Francisco for interchange between defendants. The pro rate per rate basis of determining divisions will be referred to as pro rate.

Revised table.

	Class first.	Class second.	Nine months' round trip.	Summer excursion round trip.
San Jose to Kansas City	$50.00	$50.00	$90.00	$67.50
Minimum division required of complainant via San Francisco and via Stockton	6.25	5.00	12.50	12.50
Division if routed over the Santa Fe:				
Via San Francisco	1.22	1.22	2.43	1.54
Via Stockton	2.34	2.32	4.64	2.91
Via Los Angeles	10.16	9.81	.....	.....

It thus appears that on traffic from San Jose interchanged with the Western Pacific at San Francisco, on a pro rate basis, the Southern Pacific would receive $1.22, but if the interchange were with the Santa Fe it might be at San Francisco for $1.22, or at Los Angeles for $10.16, as the passenger might elect. If the journey begins or ends at Los Angeles, and is made in part over the Western Pacific, the minimum division is not exacted from that carrier by the Santa Fe or by the Southern Pacific because the pro rate basis yields more; and yet the Santa Fe could carry the passenger all the way to Kansas City, and the Southern Pacific could carry him for a substantial part of the way. By maintaining joint rates with the Western Pacific on such traffic each of the defendants voluntarily short hauls itself. Nowhere is this done by the Western Pacific.

It is obvious that the traffic is not interchanged under similar circumstances and conditions. To find otherwise would be to disregard the interchange arrangements at Los Angeles, for example, and rest the case upon the possibility of interchange between all the lines at San Francisco. The public, for whose benefit the interchange arrangements are primarily made, evidently has not disregarded the different interchange points and the carriers' revenues reflect the difference. During a representative four months' period in 1916, as stated in the majority report, the Southern Pacific received an average of $10.90 per passenger interchanged with the Santa Fe and $7.88 per passenger interchanged with the Western Pacific. On first-class traffic interchanged with the Western Pacific during that period the Southern Pacific exacted its minimum division on 14 per cent of the tickets, amounting to 9 per cent of the revenue accruing to it from this traffic. On second-class traffic the minimum was exacted on 24 per cent of the tickets, and amounted to 16 per cent of its revenue. If the pro rate rule without minimum had been applied to all passenger traffic interchanged with the Western Pacific the revenue accruing to the Southern Pacific would have been less than it was and, even as augmented by the minimum, its divisions from the Western Pacific were less than from the Santa Fe. The difference between the revenues accruing to the Southern Pacific on traffic interchanged by it with the Santa Fe and with the Western Pacific, respectively, finds explanation only in a general use by the traveling public of different points of interchange which affords to the Southern Pacific a longer haul when the interchange is with the Santa Fe than when it is with the Western Pacific.

It is not contended that the difference in the basis of divisions has or can have any effect upon the volume of traffic handled by the Western Pacific. The defendants have opened their lines to the Western Pacific at rates equal to those applying via their own

routes, although not required to do so. This is a distinct concession to complainant, for if defendants should refuse to maintain in connection with the Western Pacific through routes and joint fares which result in their short hauling themselves the complainant would not be in position to participate in that traffic at all.

The burden of sustaining the complaint is upon the complainant. It has failed to show that its interchange with each of the defendants as compared with their interchange between themselves is made under similar circumstances and conditions, or that the respective divisional arrangements unlawfully discriminate against it within the meaning of the act to regulate commerce. On the contrary, it would seem that the complainant has been receiving benefits which, under the act, we could not require the defendants to accord.

There remains the finding that complainant, without allegation or proof of unreasonableness, is entitled to reparation, because of the discrimination found in the majority report to have been unlawful under the second paragraph of section 3 of the act. It is there said: "If the damage alleged is directly due to a violation of the act the award follows as a matter of course." This not only ignores the fundamental distinction between allegation and proof, but, as I read it, goes counter to the decision recently affirmed by the Commission in *Iten Biscuit Co.* v. *C., B. & Q. R. R. Co.*, 53 I. C. C., 729. For the reasons above outlined I am unable to join in the conclusions reached by the majority.

No. 10148.

NORTHERN GRAIN & WAREHOUSE COMPANY
v.
OREGON TRUNK RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 10, 1919. Decided August 1, 1919.

Defendants' tariff rule which provided in connection with a rate on wheat in carloads from Culver, Oreg., to Minneapolis, Minn., that when a car of 80,000 pounds capacity, the minimum under the said rate, was not furnished, the marked capacity of the car used, but not less than 60,000 pounds, would govern, found unreasonable and to have resulted in increased charges which were not justified. Reparation awarded and reasonable rule prescribed.

Charles S. Cohn for complainant.
Charles A. Hart for defendant carriers.
R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the grain business at Portland, Oreg., alleges by complaint seasonably filed that the charges collected on a carload of wheat shipped January 15, 1917, from Culver, Oreg., a station on the Oregon Trunk Railway, to Minneapolis, Minn., were unreasonable, and asks for reparation and relief for the future. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had.

The shipment moved over the lines of the defendant carriers, and transportation charges were collected in the sum of $282.84 at the applicable rate of 57.5 cents per 100 pounds and the weight at destination of 49,190 pounds.

Complainant requested the Oregon Trunk Railway Company to furnish an 80,000-pound-capacity car. The car furnished had a marked capacity of 50,000 pounds. This was accepted and used, notation being made on the freight bill and bill of lading to the

effect that an 80,000-pound-capacity car had been ordered. Graduated minima were provided in connection with the 57.5-cent rate, the minimum on a 50,000-pound-capacity car being 44,000 pounds. Defendants also published in the same tariff, for alternative application, a rate of 50 cents from and to the same points subject to the following rule:

> Rates in items making reference to this rule will be subject to carload minimum weight of 80,000 pounds, except that when cars of less than 80,000 pounds capacity are furnished minimum weight will be marked weight capacity of car used, but not less than 60,000 pounds.

The lowest per-car charge under this rate and rule was $300. Complainant does not attack the measure of the rate charged or the minimum applicable thereto, its sole contention being that the portion of the rule quoted which fixes the minimum weight in connection with the 50-cent rate at not less than 60,000 pounds, in cases where the carrier furnishes a car of less capacity, is unreasonable.

Complainant states that it was prepared to load 80,000 pounds. It loaded less than 50,000 pounds. Complainant contends that as it was ready to load the minimum in connection with the 50-cent rate it is unreasonable to penalize it because the carrier did not furnish a car that would hold that minimum. Prior to February 5, 1916, the rule quoted provided a minimum of 80,000 pounds, except that, when cars were loaded to capacity, actual weight would govern, but in no case less than 77,000 pounds. On that date the limitation was removed, so that if the carrier was unable to furnish an 80,000-pound car, the minimum in connection with the 50-cent rate was the marked capacity of the car furnished. The present rule became effective September 25, 1916. Complainant contends that the rule in effect between February 5 and September 25, 1916, would be reasonable and proper for the future and seeks reparation upon that basis.

The establishment of the 60,000-pound limitation on September 25, 1916, resulted in increased charges which the carriers have the burden of justifying. Their evidence was meager. They stated that the 57.5-cent rate was the established basis from and to the points named, and the 50-cent rate a concession conditioned upon heavy loading. This tends to support the reasonableness of the alternative arrangement, but affords no justification for the establishment on September 25, 1916, of the 60,000-pound limitation in lieu of the previously existing rule basing the charges on the marked capacity of the car furnished. In this connection defendants' witness merely said that in his opinion the 60,000-pound limitation was not unreasonable in connection with the 50-cent rate.

We find that defendants have not justified the increased charges resulting from the amendment of the rule on September 25, 1916.

and that the rule as applied in connection with the transportation of wheat, in carloads, from Culver to Minneapolis was unreasonable to the extent that it provided for the assessing of charges on shipments in cars of less than 80,000 pounds capacity, furnished for the carrier's convenience, in excess of those that would have accrued upon the marked capacity of the car used, and that for the future so long as defendants maintain a flat minimum applicable in connection with a rate on this traffic from and to these points it will be unreasonable to provide for the assessing of charges on shipments in cars of a capacity less than the minimum furnished for the carrier's convenience, in excess of those that would accrue upon the marked capacity of the car used. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued had the rule herein found reasonable been in effect; and that it is entitled to reparation in the sum of $32.84, with interest.

An appropriate order will be entered.

No. 10184.

NATIONAL SHIPBUILDING COMPANY OF TEXAS
v.
KANSAS CITY SOUTHERN RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 11, 1919. Decided August 1, 1919.

Rate on lumber, in carloads, from Merryville, La., to Orange, Tex., by way of De Ridder, La., and Mauriceville, Tex., found unreasonable. Reparation awarded and reasonable maximum rate prescribed.

H. S. L'Hommedieu for complainant.
J. S. Hershey and *Frank G. Wren* for defendant carriers.
R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in shipbuilding at Orange, Tex., alleges by complaint filed April 20, 1918, that the charges collected on nine shipments, consisting of 19 carloads of lumber from Merryville, La., to Orange, between January 7 and April 5, 1918, inclusive, were unreasonable to the extent that they exceeded those that would have accrued at a rate of 10 cents per 100 pounds. It asks reparation and the establishment of reasonable rates on lumber, in carloads, from points in Louisiana on the Gulf, Colorado & Santa Fe Railway, hereinafter called the Santa Fe, to Orange. By supplemental complaint filed prior to the hearing the Director General of Railroads was made a party defendant. Rates in this report are stated in cents per 100 pounds, and, except where otherwise noted, are those in effect at the time of movement.

The shipments, loaded in 19 cars, aggregated 826,540 pounds, an average of 43,500 pounds per car. They moved as routed by the shipper over the Santa Fe to De Ridder, La., Kansas City Southern Railway to Mauriceville, Tex., and Orange & Northwestern Railroad to destination, 91.9 miles. Transportation charges were collected in the sum of $1,777.09, based on a rate of 21.5 cents, exclusive of a war tax. A joint rate of 27 cents, minimum 30,000 pounds, was legally applicable so that the shipments were undercharged 5.5 cents per 100

pounds. This rate was increased to 34 cents on June 25, 1918, pursuant to General Order No. 28, issued by the Director General of Railroads.

There was contemporaneously in effect a joint commodity rate of 6 cents on lumber, in carloads, from Merryville to Orange, increased to 7.5 cents under the order mentioned, applicable over the Santa Fe and the Texas & New Orleans Railroad, by way of Kountze, Tex., 109.8 miles. The short-line distance between these points is by way of the Santa Fe to Buna, Tex., and the Orange & Northwestern beyond, 68.7 miles.

In support of its contention that a 10-cent rate would have been reasonable, complainant cited the following rates on lumber, in carloads:

From—	To—	Miles.	Rate.	Car-mile earnings.[1]
			Cents.	*Cents.*
Merryville, La	Houston, Tex	156.6	10	19.2
Boyce, La	Orange, Tex	152.1	10	19.7
Fullerton, La	Houston, Tex	186.4	10	16.1
Merryville, La	Orange, Tex	109.8	[2] 6	16.4
De Ridder, La	Houston, Tex	159.8	10	19.1
Bannister, La	Beaumont, Tex	92	6	19.6

[1] Based on a minimum of 30,000 pounds. [2] Via Santa Fe and Texas & New Orleans.

Based on the applicable minimum of 30,000 pounds, the 27-cent rate yielded 88.1 cents per car-mile.

Defendants' witness testified that the 6-cent rate from Merryville to Orange was established in error; that they regarded it as abnormally low; and that a fifteenth section application for authority to increase it, pending when the carriers were taken under federal control, was withdrawn at the direction of the Director General. At the hearing it was assumed that a combination rate of 20 cents, composed of a commodity rate of 6 cents to De Ridder, a proportional rate of 6 cents to Mauriceville, and a class-D rate of 8 cents beyond, applied, and all of defendants' evidence was in defense of this rate. They contended that the combination rate was composed of three reasonable local rates and that in view of the existence of the 6-cent joint rate from and to the points in question for a two-line haul, there was no reason or necessity for the maintenance over the route used of a rate lower than that in effect. No evidence was submitted tending to show that the rates from any other points on the Santa Fe in Louisiana were unreasonable.

Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax

would have been if computed on the rate which we subsequently find would have been reasonable.

We find upon the facts of record in this proceeding that the combination rate applicable over the route of movement from Merryville to Orange was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that the present rate via that route is, and for the future will be, unreasonable to the extent of its excess over 12.5 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of $950.55, with interest.

An appropriate order will be entered.

No. 10199.

BROCK CANDY COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 4, 1919. Decided August 1, 1919.

Charges on clarified sugar in Cuban bags, in carloads, from New Orleans, La., to Chattanooga, Tenn., found to have been unreasonable. Reparation awarded.

John S. Fletcher for complainant.

R. Walton Moore and *Claudian B. Northrop* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the manufacture of candy at Chattanooga, Tenn., alleges by complaint filed May 23, 1918, that an unreasonable rate was charged on two carloads of sugar shipped January 5 and 9, 1918, from New Orleans, La., to Chattanooga. It asks for reparation and the establishment of a reasonable rate for the future. By supplemental complaint filed prior to the hearing the Director General of Railroads was made a party defendant.

The shipments consisted of clarified sugar packed in heavy, single jute bags containing from 300 to 330 pounds each. They aggregated 155,700 pounds, and charges were collected, in addition to a war tax, in the sum of $1,433.36, based on the applicable second-class rate of 92 cents per 100 pounds governed by the southern classification.

Complainant contends that the rate on clarified sugar in the bags used should not exceed the 24-cent commodity rate contemporaneously applicable from and to these points on:

> Sugar, beet or cane, in cartons or bags in barrels or boxes, in double bags, or in bulk in barrels, and sugar in single cotton bags, weighing not less than 5.6 ounces per square yard.

The bags used, which measured 48 by 58 inches and weighed 2 pounds 10 ounces each, or about 19.55 ounces per square yard, were similar to those in which raw sugar is ordinarily transported from

Cuba and are sometimes called Cuban bags. After arrival of the sugar at the refineries the bags are washed, repaired, and sold to owners of sugar plantations who use them to pack raw and clarified sugars.

For years the defendants have concurred and now concur in a tariff under which sugar in single bags has taken the same rates as sugar in barrels from New Orleans to Cincinnati, Ohio, to which Chattanooga is intermediate, and to other points in central freight association and western classification territories and in Kentucky and Tennessee. The only requirement in that tariff with respect to the bags is that they shall be made of cloth, sufficiently strong and so closely woven and stitched as to carry the contents safely and prevent sifting. Complainant's witness testified that for the past 10 years it has been a common practice to ship clarified sugar in Cuban bags, and that shipments have been made and are now being made to Cincinnati and other points in Ohio, Michigan, Illinois, Wisconsin, and Missouri at the rates contemporaneously applicable on sugar in barrels.

Defendants assert that while the Cuban bag is a safe container for raw sugar it is not a safe container for refined sugar, as the large mesh permits that sugar to sift through and subjects it to contamination by contact with oils or liquids on the floor of the car; and that in moving about a package holding from 300 to 330 pounds of sugar the danger of sifting, wearing of holes, and opening up of patches tends to lessen the utility of this bag as a container. They state that the containers named in the commodity item, except the single cotton bag, were adopted after careful consideration; that they meet the requirements of substantially the entire trade in the southeast, and that the defendants should not be required to add to that item packages adapted only to certain grades of sugar. Before the single cotton bag was adopted, the double bag commonly in use consisted of an inner light cotton bag and an outer burlap bag. Defendants' witness testified that the single cotton bag was adopted in 1917 to meet the scarcity of burlap bags caused by the war; that it has proven an unsafe container, and that it is proposed to eliminate it from the commodity item. He further testified that the above-mentioned tariff naming rates from New Orleans to central freight association and other territories will be republished; and that, while the carriers do not object to any safe container, they will probably bring the provision with respect to the containers into conformity with the commodity item above quoted.

Although complainant's evidence indicates that the Cuban bag is a safe container for clarified sugar, the record is insufficient to support a finding that the same rate should be established for the future

on clarified sugar in these bags as on sugar generally in double bags. However, there was no justification for the charging of a higher rate on this shipment than would have been applicable had the sugar been packed in single cotton bags of the kind described in the commodity item.

Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

We find that the charges collected were unreasonable by virtue of the fact that the packing requirements permitted the assessment of a commodity rate on sugar in cotton bags which are no safer as containers for clarified sugar than the Cuban bags, while not permitting the assessment of a commodity rate on clarified sugar in Cuban bags. We also find that the charges were unreasonable to the extent that they were in excess of the contemporaneous commodity rate of 24 cents applicable on sugar in these cotton bags. As the defendants propose a revision of packing requirements on sugar no order for the future will be entered.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those herein found reasonable; and that it is entitled to reparation in the sum of $1,059.44, with interest.

An appropriate order will be entered.

No. 10278.[1]

BEAUMONT CHAMBER OF COMMERCE

v.

DIRECTOR GENERAL, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

Submitted February 4, 1919. Decided August 1, 1919.

Rates on molding sand, carloads, from Utica, Ill., to Beaumont, Tex., not found unreasonable. Two shipments found to have been misrouted and reparation awarded on one.

Charles A. Bland for complainant.

H. M. Garwood and *M. J. Dowlin* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaints seasonably filed on behalf of the Beaumont Iron Works, a corporation engaged in the foundry business at Beaumont, Tex., and hereinafter styled complainant, it is alleged that the defendant's rates on four carloads of molding sand shipped from Utica, Ill., to Beaumont in October, 1917, and April, 1918, were and are unreasonable and in violation of section 4 of the act to regulate commerce. Complainant asks for reparation and the establishment of a reasonable rate for the future. Unless otherwise indicated rates in this report are stated in cents per 100 pounds.

The essential details of the shipments, all of which moved from Utica to Beaumont, follow:

Docket No.	Date of movement.	Route.	Weight.	Rate applicable.
			Pounds.	*Cents.*
10278.....	Oct. 2, 1917	C. R. I. & P., Terral, Okla.; C. R. I. & G., Fort Worth, Tex.; T. & B. V., Houston, Tex.; B. S. L. & W.	85,320	[2] 47.5
Sub. 2....	Apr. 24, 1918	.....do.....	114,960	47.5
Sub. 1....	Apr. 19, 1918	C. R. I. & P., Kansas City, Mo.; K. C. S., Texarkana, Tex.; T. & P. S.	90,000	[3] 44
Sub. 3....	Oct. 12, 1917	C. R. I. & P., Terral; C. R. I. & G., Fort Worth; H. & T. C., Houston; T. & N. O.	86,140	44

[1] This report also embraces No. 10278 (Sub-No. 2), Same v. Same; No. 10278 (Sub-No. 1), Same v. Director General, Chicago, Rock Island & Pacific Railway Company, et al.; and No. 10278 (Sub-No. 3), Same v. Director General, Chicago, Rock Island & Gulf Railway Company, et al.

[2] Based on joint class E rate of 44 cents to Houston and a commodity rate of 70 cents per net ton, equivalent to 3.5 cents per 100 pounds beyond. The first shipment was undercharged 70 cents per net ton.

[3] Joint class E rate.

The shipments in No. 10278 and Sub-No. 2 were routed in the bill of lading, "Gulf Coast line del'y at Beaumont" and "The Gulf Coast lines," respectively. The first could have been moved via the Kansas City Southern and the Texarkana & Fort Smith and delivery on the Gulf Coast lines effected at the 44-cent rate, with absorption of the switching charges by the terminal-haul carrier. The second shipment required a line haul for the Gulf Coast lines which could have been afforded at the 44-cent rate by routing over the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, through El Reno, Okla., and Little Rock, Ark., to Eunice, La., thence Gulf Coast line. These two shipments were therefore misrouted by the Rock Island.

The 44-cent rate applied over other lines through East St. Louis, Ill., and by this route there was a lower combination rate, namely, 32.75 cents, based upon rates of $1.05 per net ton, equivalent to 5.25 cents per 100 pounds, to East St. Louis and 27.5 cents beyond. Complainant contends that the fourth section was violated, but none of the shipments moved over that route and any fourth section departure with respect thereto is beyond the issues of this case. By way of Kansas City the lowest combination was 46.5 cents, so that no violation of the fourth section occurred over the routes of movement.

As the legally applicable joint rate through East St. Louis was no lower than that through Kansas City, complainant's contention of right to routing by way of East St. Louis with consequent claim to the benefit of the lower combination of 32.75 cents through that gateway is without merit.

The shipments here considered were the only ones known to have moved from Utica to Beaumont. No movement to other destinations in Texas is shown, and there were no joint commodity rates on molding sand to other points in the general territory in which Beaumont is located.

Complainant's case rests primarily upon the existence at the time of movement of the combination rate of 32.75 cents by way of East St. Louis and the fact that the general basis for constructing class and commodity rates from Chicago territory, including Utica, to Texas points is to add differentials to the rates from St. Louis and East St. Louis. It shows that the class E differential is 5 cents, or one-fourth cent less than the local commodity rate in effect at the time of movement, from Utica to East St. Louis, and seeks the establishment of a joint commodity rate differentially made, which it contends would be reasonable. No other rate comparisons are submitted nor are we afforded any definite information of comparative distances or governing transportation conditions by the

several routes. The rates assailed were increased June 25, 1918, as a result of General Order No. 28, issued by the Director General of Railroads, but complainant does not object to increases as provided for in that order. On March 6, 1919, subsequent to the hearing, a commodity rate of 35 cents, based on the East St. Louis combination, was established over the various routes above referred to except in connection with the Trinity & Brazos Valley.

We find that the rates applicable over the routes of movement are not shown to have been unreasonable, but that the Chicago, Rock Island & Pacific Railway Company misrouted the shipments in No. 10278 and Sub-No. 2; that the Beaumont Iron Works made the shipment in Sub-No. 2 as described and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued had the shipment been forwarded over the lower-rated route hereinbefore described; and that it is entitled to reparation in the sum of $40.24 with interest.

As the charges collected on the shipment in No. 10278 were on the basis of a rate of 44 cents, the Beaumont Iron Works was not damaged by the misrouting of that shipment. The Rock Island, however, should settle with its connections on the basis of the rate applicable over the route of movement.

A war tax of $16.38 was collected on the shipment in Sub-No. 2, whereas on the basis of the charges applicable over the lower-rated route the war tax would have been $15.17. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes, and we also hold that we may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate applicable via the route over which we find that the shipment should have moved. But this holding is not to be construed as interposing any obstacle to refund of the war tax on the overcharge in accordance with regulations promulgated by the Commissioner of Internal Revenue.

An order awarding reparation in Sub-No. 2 and dismissing the complaints in No. 10278 and Sub-Nos. 1 and 3 will be entered.

No. 10333.[1]

NEW ORLEANS, NATALBANY & NATCHEZ RAILWAY COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted June 7, 1919. Decided August 1, 1919.

The question whether the word "junction" as used in the order entered July 29, 1914, in *The Tap Line Case*, 31 I. C. C., 490, relates to the point of connection between two main lines or the point of actual placement of cars interchanged being under consideration; *Held*, That the junction within the meaning of that order is the point or locality where the two main lines meet and connect. Complaint dismissed.

T. Brady, jr., for complainant.

R. V. Fletcher and *E. A. Smith* for defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

EASTMAN, *Commissioner.*

The issue here presented was made the subject of a proposed report by the examiner before whom the testimony was taken. Exceptions and briefs were filed and the parties were heard in oral argument.

By the second supplemental report in *The Tap Line Case*, 31 I. C. C., 490, issued July 29, 1914, we found that all the through routes and joint rates in effect prior to May 1, 1912, between the trunk lines and tap lines named on the record, complainant being one of these tap lines, should be restored and reestablished, and that the divisions out of the through rate on interstate shipments of lumber and forest products from points on these tap lines should not exceed the following maximum amounts: For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles from the junction, $3 per car, etc. By our fifth supplemental order of April 7, 1919, these amounts were increased, respectively, effective June 1, 1919, to $2.50 and $3.50. Complainant

[1] This is a proceeding supplemental to *The Tap Line Case*, 23 I. C. C., 277; 31 I. C. C., 490.

prays that an order be entered fixing the "junction from which the distances the cars which it has switched and is switching can be determined."

The main line of the Illinois Central Railroad Company, hereinafter called the defendant, extends from Natalbany, La., almost due north. That part of the main line of the complainant which is near the main line of the defendant runs in a southeasterly direction from the plant area of the Natalbany Lumber Company, which is the proprietary company controlling complainant, and connects with the main line of the defendant south of the depot at Natalbany. North of the depot two interchange tracks owned by defendant parallel its main line, connecting at two points with each other. The easterly track is used by the defendant for the delivery of traffic to the complainant. It joins the main line of the defendant south of the depot at the point where the main line of the complainant joins it. The westerly track is used by the complainant for the delivery of traffic to the defendant. It joins the main line of the complainant near the depot at a point which may be called the south switch. This westerly track runs north from the depot over the scale, joins the easterly track, branches off again, and thence parallels it to a further point of meeting about 1,800 feet north, which may be called the north switch. From this latter point a single track extends north and connects with the main line of the defendant. The distance from the south switch to the north switch is 0.48 of a mile. Complainant furnishes the material and labor necessary for the maintenance of the westerly track and pays defendant for its use a rental of 6 per cent upon an agreed valuation of $870 for the rails and fastenings.

From various points within the plant area of the lumber company the distances in miles to the north switch by way of the south switch and to the point of connection between the main lines of the complainant and defendant are as follows:

	North switch.	Main-line junction.		North switch.	Main-line junction.
Loading ramps, mill C	1.55	1.15	Loading ramps, mill B	1.14	0.7
Lath loading platform (dry kiln)	1.27	.87	Planing mill and box factory	1.04	.6
Rough lumber shed	1.06	.66	Planing mill (storage) (molding)	.97	.5
Mason station	1.21	.81	Finished lumber shed	.91	.5

The distances to the north switch were obtained by joint measurements made by representatives of the parties and are agreed to be correct, while the distances to the main-line junction have been calculated therefrom. Mill C has been abandoned, and at the time of the hearing was being dismantled. Eliminating that mill, from no

point within the plant area is the distance as much as 1 mile to the junction of the main lines, but five points within the area are distant from the north switch more than 1 mile. The bulk of the shipments originate at the planing mill, the box factory, and the loading ramps, mill B.

Cars of forest products are moved by complainant and spotted on the westerly interchange track. Its practice is to place these cars just far enough on this track to clear the southerly switch connecting it with the easterly track. Northbound traffic is pulled by the motive power of defendant via the north switch; southbound traffic via the south switch. About 80 per cent of the traffic is northbound.

Complainant contends that the north switch is the point to which measurements should be made to determine the distances it switches cars for delivery to defendant, and asks us to fix this point as the "junction" to be used in complying with the orders in *The Tap Line Case*. It argues that it maintains and has rebuilt the westerly interchange track, partially built on its land and partially on land leased from the defendant, and pays rent for its use; that it delivers cars to the defendant by way of this track; and that most outbound traffic does not touch the rails of the defendant until it has passed over the north switch. It cites *United States* v. *Oregon & Calif. R. R. Co.*, 164 U. S., 526, in which it was said:

> We are unable to see why any other than their usual meaning should be attributed to the words "point of junction." Junction in the ordinary acceptation as applied to railroads is the point or locality where two or more lines of railway meet.

Defendant does not gainsay the fact that a junction, as applied to railroads, is the point where their lines meet, but asserts that an interchange of cars can not take place precisely at such a point, but must be on tracks contiguous thereto. It cites authorities in support of the doctrine that a common carrier's obligation involves only a delivery and acceptance of carload shipments at some convenient "point of interchange," and calls attention to the fact that in the original decision in *The Tap Line Case*, 23 I. C. C., 277, 295, we said:

> It will, of course, be understood that the allowances and divisions * * * must have a proper relation to the service performed and be such in amount as not to effect a rebate to the industry.

and that the Supreme Court of the United States in its decision in *The Tap Line Cases*, 234 U. S., 1, 29, stated:

> If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

Claiming that complainant's switch engine in making deliveries moves but a few feet beyond the southerly connection between the two interchange tracks, defendant contends that, in view of the service actually performed by complainant, this connection should be fixed as the "junction" within the meaning of the orders in question.

It is true that the divisions received by tap lines out of the through rate should have a proper relation to the service which they perform. In laying down a general rule for the determination of these divisions, however, it was obviously impracticable for us to require a computation in each case of the actual distance moved by engines or cars in effecting deliveries, and necessary to adopt some simpler method of measuring the service which would approximate justice and at the same time be capable of easy application. The order entered July 29, 1914, in connection with the second supplemental report in *The Tap Line Case*, here in question, was constructed upon that principle and in the knowledge and with due consideration of the fact that interchange tracks at or near the point of junction are usually necessary in moving traffic between the tap lines and their trunk line conections. In sustaining this order, the Supreme Court said in *O'Keefe* v. *United States*, 240 U. S., 294, 304:

> The tap line problem is exceedingly complex, and the importance of a general rule based upon simple elements easily ascertained is obvious.

The word "junction," as used in this order, means the point of connection between the main line of the tap line and the main line of the trunk line. Any other interpretation, as the situation in this case clearly shows, would but open the door to endless controversies and make the rule well-nigh impossible of practical application. Moreover, we are of the opinion that neither in this instance nor in any other will the use of this fixed and certain point lead to substantial injustice. No order fixing a "junction" is here necessary, since this interpretation of the word as used in the orders in question will suffice. The complaint is therefore dismissed.

No. 10191.

CHARLES O. SELLEN

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted September 12, 1918. Decided October 2, 1919.

Demurrage charges at Jersey City terminal, N. J., on five carloads of hay shipped from certain points in Ohio not shown to have been unreasonable. Complaint dismissed.

Richard E. Weldon for complainant.

R. W. Barrett for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

This complaint, seasonably filed, alleges that the demurrage charges collected by the defendant on five carloads of hay at Jersey City terminal, N. J., were unreasonable, and asks for reparation.

The shipments, which originated at certain points in Ohio, between June 22 and June 27, 1916, both inclusive, were billed to Springville, Pa., and, with the exception of one carload which was routed Lake Shore & Michigan Southern Railway and Lehigh Valley Railroad, were routed Lehigh Valley at Buffalo. Springville was used as a "blind-billing" station, the cars being stopped for diversion orders at Sayre, Pa. Complainant, desiring to forward the shipments to New York, N. Y., lighterage delivery, wired defendant's agent at Sayre on July 8, 1916, as follows:

Mailed you bills lading yesterday on seven cars. Can you forward same New York City lighterage free? If you are unable to do this can you forward same to Jersey terminal? Advise if cars are subject to demurrage.

The agent replied as follows on July 10, 1916:

New York lighterage allowed when consignee arranges delivery through eastern freight agent. All cars subject to demurrage. Can forward to Jersey City terminal.

On the same date, following the receipt of the agent's telegram, the complainant directed that the cars be forwarded to F. B. Hewitt, Jersey City terminal, where they arrived July 17, 1916. On that date notice of arrival was sent to the consignee, who within 24 hours, the time limit specified in the defendant's tariff, gave defendant orders for delivery at East One hundred and forty-ninth street, New York.

When the shipments left the points of origin and until September 2, 1916, the defendant had in effect an embargo against hay and other commodities consigned, reconsigned or to be reconsigned to certain New York harbor points including East One hundred and forty-ninth street terminal, unless the acceptance of same was authorized by its general eastern freight agent. As the consignee's order for delivery of the shipments at East One hundred and forty-ninth street terminal was not accompanied by such authorization it was refused and not executed until September 2, 1916, when the embargo was lifted. Demurrage charges in the sum of $195 were collected for the detention of the cars at Jersey City terminal.

The complainant takes the position that he fulfilled all duties imposed upon him under the law by inquiring of defendant's agent as to the existence of an embargo; that the agent's reply to the effect that the cars could be forwarded to Jersey City terminal was intended to convey, and did convey, the information that the shipments could be forwarded to Jersey City terminal and, in consideration of the payment of the freight charges, would be accorded all the "privileges" attending shipment to that terminal, including reconsignment to East One hundred and forty-ninth street terminal; and that he did not obtain the services for which he contracted and was damaged thereby. But the defendant did not hold itself out in its tariff to reconsign these shipments to the embargoed point. Its reconsignment tariff contained the following provision:

> Cars can not be reconsigned or forwarded to any point on the Lehigh Valley Railroad or its connections at which embargo may be in effect at the time reconsignment is ordered.

As we stated in the *Reconsignment Case*, 47 I. C. C., 590, at page 634, where the carrier publishes such a provision in its tariff the shipper must either resort to a service that the carrier does hold itself out to perform, such as reconsignment to a point not embargoed, or must hold the car at the expense of demurrage, a possibility which he assumed under the published tariffs when the car left the point of origin. The demurrage charges collected were in accordance with the schedule of charges published by the defendant and there is no dispute as to the measure thereof. The interpretation to be placed upon the agent's telegram is immaterial, for even though complainant's interpretation be accepted the law is well settled that the misquotation by the agent or employee of the carrier of a rate, or a tariff provision which affects the application of a rate or charge, is not a sufficient basis for an award of reparation.

We find that the demurrage charges assailed are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 9941.

MERCHANTS FREIGHT BUREAU OF LITTLE ROCK, ARK.,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS.[1]

Submitted June 15, 1919. Decided September 25, 1919.

Rates for the transportation of knitting-factory products in any quantity from producing points in the states of Tennessee, Georgia, and Alabama to Little Rock, Ark., not found unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed, and fourth section relief denied.

A. R. Bragg for complainant.

Fred G. Wright for Missouri Pacific Railroad Company and St. Louis Southwestern Railway Company.

George E. Schnitzer for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

The following is substantially the report proposed by the examiner and served upon the parties:

Complainant, a voluntary association of merchants, manufacturers, and shippers at Little Rock, Ark., alleges in its complaint, filed September 24, 1917, that defendants' rates for the transportation in any quantity of knitting-factory products, consisting of hosiery and underwear made wholly of cotton, from producing points in the states of Tennessee, Georgia, and Alabama, are unreasonable, unjustly discriminatory, and unduly prejudicial, and asks for the establishment of reasonable rates. Reparation is sought on behalf of the Beal-Burrow Dry Goods Company, a partnership engaged in business at Little Rock. The members of this partnership are not before us, and there is no basis for an award.

As the Director General of Railroads has not been made a party defendant, our discussion and findings will be confined to the rates assailed in the complaint. Rates will be stated in cents per 100 pounds.

[1] This report also embraces portions of Fourth Section Applications Nos. 458, 699, 703, 799, 972, 1024, 1530, 1548, 1561, 1573, 1952, 2043, 2045, 2138, 3912, 3918, 4218, 4219, 4220, and 4944, which were assigned for hearing with the complaint.

The complainant alleged that there were no joint rates on knitting factory products from and to the points in question, and assails the combination of various proportional commodity rates to Memphis, Tenn., and the local first-class rate beyond.

The combination rates to Little Rock from some of the principal producing points, as given by complainant, appear in the table below. Complainant asks for the establishment of joint rates 20 cents lower than those here shown.

Point of origin.	Rates.	Point of origin.	Rate
Augusta, Ga	120	Rome, Ga	
Atlanta, Ga	116	Chattanooga, Tenn	
Dalton, Ga	118	Knoxville, Tenn	
Gainesville, Ga	120	Nashville, Tenn	
Macon, Ga	121	Huntsville, Ala	

These rates are compared by complainant with the rates from the southeast to various points other than Little Rock. In the table below are shown the rates at the time of the hearing from Rome, Ga., which we use as a typical point of origin. The distances are those given by complainant.

To—	Mileage.	Rate
Little Rock, Ark	521	
Cincinnati, Ohio	418	
Columbus, Ohio	604	
St. Louis, Mo	693	
Omaha, Nebr	1,107	
Kansas City, Mo	872	
Chicago, Ill	892	

Complainant particularly emphasizes the fact that the factor west of Memphis was relatively much greater than the factors east of Memphis. It was pointed out, for instance, that from Huntsville, Ala., to Memphis, a distance of about 300 miles, the rate was 27 cents while for 135 miles from Memphis to Little Rock the rate was 7 cents. This 70-cent rate does not appear to be out of harmony with other rates in the same general territory west of the Mississippi River. There was formerly a proportional commodity rate of 50 cents from Memphis to Little Rock, which applied on traffic from southeastern producing points, but this rate was permitted to be canceled, and the first-class rate of 70 cents made applicable in its stead, in *Rates on Knitting-Factory Products*, 25 I. C. C., 634.

The allegations of unjust discrimination and undue prejudice are not definite, but upon the hearing it was made clear that complainant's principal grievance in that respect was that the rates from these producing points to Memphis were relatively much lower than

to Little Rock. Certain of complainant's members buy their knitting-factory products in competition with Memphis jobbers, and in distributing to the surrounding country must sell in competition with the Memphis jobbers and shrink their profits accordingly. The disparity in the through rates results from the fact as above stated that the 70-cent factor applying from Memphis is relatively much greater than the factors to Memphis.

Upon this record the rates assailed are not found to have been unreasonable, unjustly discriminatory, or unduly prejudicial, and the complaint will be dismissed.

Our examination of the tariffs discloses that the rates assailed were in most cases inapplicable to the traffic for the reason that there were joint through class rates from points of origin to Little Rock. These were generally higher than the rates based on Memphis combinations. The question whether such through rates are unreasonable because higher than the combinations is not in this case, but the adjustment was established without authority from this Commission under the fourth section of the act to regulate commerce, and is therefore unlawfully maintained. It should be promptly canceled. The charges on some of the shipments appear to have been based on the Memphis combination.

Portions of the various fourth section applications listed in the margin of the title page were assigned for hearing with this complaint in so far as they seek authority to charge lower rates on this traffic to Little Rock and other points in Arkansas than to intermediate points. No justification was offered for such departures from the long-and-short-haul provision of the fourth section of the act to regulate commerce as may exist, and the applications will be denied to the extent that they are involved.

HALL, *Commissioner:*

No exceptions were filed to the foregoing proposed report of the examiner. Upon consideration of the record we approve and adopt it as part of this report, and find that defendants have justified the rates assailed.

Appropriate orders will be entered dismissing the complaint and denying fourth section relief to the extent indicated.

No. 10053.

OWENS BOTTLE-MACHINE COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted August 31, 1919. Decided September 25, 1919.

1. Rates charged for the transportation of complainant's shipments of glass sand, in carloads, from Silica, Ohio, to Fairmont, W. Va., found unreasonable. Reparation awarded.
2. Through routes and reasonable joint rates on glass sand, in carloads, from Silica, Ohio, to Fairmont and Clarksburg, W. Va., prescribed for the future.

Walter A. Eversman and *Charles E. Wallington* for complainant.

Edward W. Kelsey for Toledo, Angola & Western Railway Company, defendant.

W. N. King for other defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

Complainant is a corporation engaged in the production of glass sand at Silica, Ohio, and in the manufacture of glass at Fairmont and Clarksburg, W. Va. It ships glass sand in carloads from Silica to numerous points within a radius of 350 to 400 miles, including Fairmont and Clarksburg. The rates to Fairmont and Clarksburg, applicable over various routes at and before the hearing, and payable by the shipper over and above amounts absorbed by the trunk lines, ranged from $2 to $3.30 per ton. By complaint filed February 1, 1918, as amended, complainant alleged that these rates were unreasonable, in violation of section 1, and asked for the establishment of through routes and reasonable joint rates from Silica to Fairmont and Clarksburg, and reparation on shipments to Fairmont which moved between July 2, 1917, and March 27, 1918, both inclusive. Unless otherwise indicated rates will be stated in amounts per ton of 2,000 pounds, and are those in effect at the time of the hearing, April 8, 1918.

Silica is about 10 miles west of Toledo, Ohio, and is reached only by the Toledo, Angola & Western Railway, which connects at points in the Toledo switching district about 8.3 miles from Silica with

the New York Central Railroad and, through the medium of the Toledo Terminal Railroad, with various trunk lines, including the Baltimore & Ohio. The Toledo, Angola & Western is not under federal control. At the time of movement there were at least seven workable routes from Toledo to Fairmont and Clarksburg, over four of which the only rate applicable on glass sand, in carloads, was a joint sixth-class rate of $3.10. Over other routes a commodity rate of $2 was in effect. The switching charge of the Toledo, Angola & Western was 20 cents per net ton, varying amounts of which were absorbed by most of the trunk lines. The rates payable by the shipper from Silica thus ranged, as stated, from $2 to $3.30.

Complainant says that it could not avail itself of the $2 rate, which applied over the Toledo & Ohio Central and connections, because of difficulty in obtaining cars for loading via that route. The large majority of the shipments moved over the New York Central from Toledo to Sandusky, Ohio, thence over the Baltimore & Ohio, at a rate of $2.10. The distance to Fairmont over this route is 332.5 miles. On account of a temporary embargo against the usual route a minor portion was shipped over the Baltimore & Ohio from Toledo at a rate of $3.15, composed of the class rate of $3.10 from Toledo, plus 5 cents, the balance not absorbed by that carrier of the 20-cent rate of the Toledo, Angola & Western to Toledo. The latter route is said to be the most practicable, as the Baltimore & Ohio serves Toledo and both destinations. Its length is 340 miles. The short-line distance is 299 miles to Fairmont and 321 miles to Clarksburg. The complaint is particularly directed against the Baltimore & Ohio, the principal defendant. The Toledo, Angola & Western, although a nominal defendant, alleged in answer and declared at the hearing that it stood ready to join in joint rates and through service interstate and had sought to make arrangements therefor with the Baltimore & Ohio, but that the latter had declined. At the time of the hearing it was necessary for complainant to make separate shipping arrangements with the carriers at Silica and at Toledo.

Glass sand may be shipped either in box cars or in open-top cars, but the former are preferred. The shipments on which reparation is claimed moved mostly in box cars, the average loading being about 38 tons. No definite facts are given as to the empty-car movement; but complainant's representative testified that box cars received under load at its Fairmont and Clarksburg factories are largely relied upon for the outbound shipments of glass, and that open-top cars are in demand for coal traffic from that region.

The evidence adduced in support of the charge of unreasonableness consists mainly of comparisons of the rates then effective from

Silica to Fairmont and Clarksburg with rates from Silica to other points for like distances and with rates from Berkeley Springs, W. Va., and Steiner, Mich., which are also sand-producing points. Most of the sand used in complainant's plants at Fairmont and Clarksburg is obtained from Berkeley Springs, and only a small portion is shipped from its own quarries at Silica. The following comparisons are fairly representative, the car-mile earnings being based upon a loading of 37 tons, which appears to have been about the average for 1917:

TABLE A.—*Comparison of rates and earnings on glass sand, in carloads, from Silica, Ohio, to various destinations.*

Destination.	Distance.	Rate per ton.	Ton-mile earnings.	Car-mile earnings.
	Miles.		*Mills.*	*Cents.*
Fairmont, W. Va.	299	$2.10	7.02	25.97
Clarksburg, W. Va.	321	2.10	6.54	24.20
Wheeling, W. Va.	223	1.26	5.65	20.91
Pittsburgh, Pa.	252	1.48	5.87	21.73
Glassport, Pa.	270	1.48	5.48	20.28
Washington, Pa.	255	1.48	5.80	21.47
McKeesport, Pa.	267	1.48	5.54	20.51
Greensburg, Pa.	283	1.48	5.23	19.35
Charleroi, Pa.	293	1.48	5.05	18.68
Huntington, W. Va.	277	1.48	5.34	19.77
Charleston, W. Va.	311	1.48	4.76	17.61
Niagara Falls, N. Y.	295	1.48	5.02	18.57
Lockport, N. Y.	323	1.48	4.58	16.95
Indianapolis, Ind.	230	1.21	5.26	19.46
Terre Haute, Ind.	288	1.32	4.58	16.95
Vincennes, Ind.	354	1.58	4.46	16.50

TABLE B.—*Comparison of rates and earnings on carload shipments of glass sand from Silica, Ohio, to Fairmont and Clarksburg, W. Va., with rates and earnings on similar traffic from Berkeley Springs, W. Va., to various destinations.*

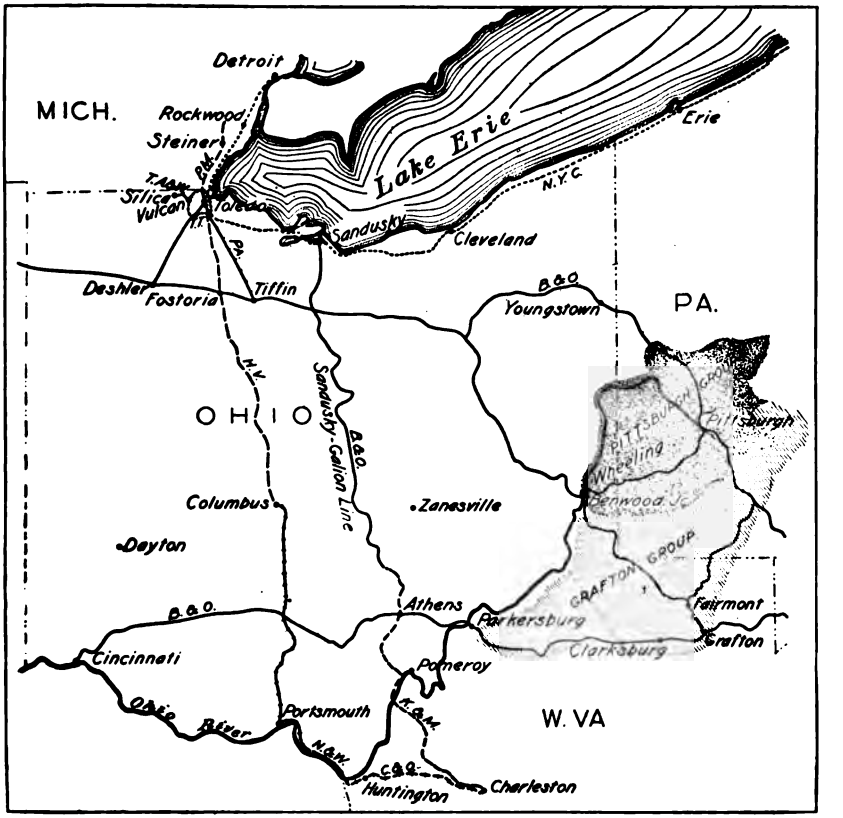
From—	Distance.	Rate per ton.	Ton-mile earnings.	Car-mile earnings.
	Miles.		*Mills.*	*Cents.*
Silica, Ohio, to—				
Fairmont, W. Va.	299	$2.10	7.02	25.97
Clarksburg, W. Va.	321	2.10	6.54	24.20
Berkeley Springs, W. Va., to—				
Fairmont, W. Va.	185	1.26	6.81	25.20
Clarksburg, W. Va.	185	1.26	6.81	25.20
Wheeling, W. Va.	262	1.32	5.03	18.63
Parkersburg, W. Va.	267	1.48	5.54	20.49
Washington, Pa.	242	1.32	5.45	20.17
Steubenville, Ohio.	250	1.32	5.27	19.50
Bellaire, Ohio.	250	1.32	5.09	18.84
Martins Ferry, Ohio.	265	1.32	4.97	18.39
Marietta, Ohio.	281	1.48	5.27	19.48
Barnesville, Ohio.	286	1.48	5.17	19.14
Zanesville, Ohio.	338	1.48	4.38	16.19
Newark, Ohio.	363	1.74	4.79	17.73
Mount Vernon, Ohio.	371	1.78	4.79	17.73
Columbus, Ohio.	380	1.78	4.67	17.31

Steiner, Mich., is about 29 miles north of Toledo, on the Pere Marquette Railway. Steiner, together with Rockwood, Mich., another sand-producing point, 36 miles north of Toledo, on the Detroit & Toledo Shore Line and Michigan Central, take the same rates as

Silica to Fairmont. The ton-mile and car-mile earnings from these points to Fairmont are therefore somewhat less than from Silica, the comparison being as follows:

	Distance.	Rate per ton.	Ton-mile earnings.	Car-mile earnings.
	Miles.		*Mills.*	*Cents.*
Silica	299	$2.10	7.02	25.97
Steiner	318	2.10	6.60	24.42
Rockwood	325	2.10	6.46	23.90

Fairmont and Clarksburg are in a rate territory lying partly in northern West Virginia and partly in southwestern Pennsylvania, known as the Grafton group. To the north, surrounding the city of Pittsburgh, Pa., is another territory referred to as the Pittsburgh



group. Class and commodity rates from points in central freight association territory west of a line across the state of Ohio from Sandusky on the north to Pomeroy on the south, known as the Sandusky-Galion line, to points in the Grafton group were made by

adding arbitraries to rates to the Pittsburgh group. Thus, the sixth-class rate from Toledo to Pittsburgh was 13½ cents per 100 pounds, and to the Grafton group 2 cents higher, making a through rate of 15½ cents, or $3.10 per ton. Commodity rates on sand to the Grafton group were made by adding 2 cents per 100 pounds to the Pittsburgh rate, but observing a minimum of 10½ cents per 100 pounds, which resulted in the rate of $2.10 per ton, applicable over three of the routes. The accompanying map indicates the approximate boundaries of these territories and the location of the principal points and lines in interest.

Complainant contends that this method of making rates from central freight association territory to the Grafton group is unreasonable. The shipments did not move through Pittsburgh, but through Benwood Junction, near Wheeling. Based upon comparisons of distances from points west of the Sandusky-Galion line to Grafton group points and to Pittsburgh group points, respectively, it is contended that the rates should be the same; hence the request for the application of the rate of $1.48 per ton to the shipments on which reparation is claimed. A few of the comparisons are here given, using sixth-class rates:

From—	To Pittsburgh.			To Fairmont.		
	Distance.	Sixth-class rate.	Ton-mile earnings.	Distance.	Sixth-class rate.	Ton-mile earnings.
	Miles.	*Cents.*	*Mills.*	*Miles.*	*Cents.*	*Mills.*
Sandusky, Ohio	192	13	13.54	245	15	12.24
Toledo, Ohio	244	13½	11.06	291	15½	10.66
Columbus, Ohio	191	13	13.61	211	15	14.22
Dayton, Ohio	262	14	10.69	280	16	11.43
Portsmouth, Ohio	284	14½	10.21	236	16½	13.98
Cincinnati, Ohio	311	15	9.65	308	17	11.04
Indianapolis, Ind	371	16	8.63	390	18	9.22
Chicago, Ill	468	17½	7.48	507	19½	7.90
Evansville, Ind	535	19	7.10	536	21	7.83

From points in the extreme southern portion of central freight association territory the distances to Fairmont were less than to Pittsburgh, but the rates to Fairmont were nevertheless the higher. But the average distance from Toledo to Fairmont, Clarksburg, and Grafton is greater than the average distance from Toledo to points in the Pittsburgh group.

Complainant further points to the fact that westbound rates from the seaboard to the Grafton group are generally the same as to the Pittsburgh group; and that westbound rates on glass, coal, and other articles from both groups to points west of the Sandusky-Galion line are also the same. In this connection they cite *Central West Virginia Glass Mfrs. Asso.* v. *B. & O. R. R. Co.*, 32 I. C. C., 218, in which it was held that the Clarksburg group, including Clarksburg, Salem,

West Union, and Weston, W. Va., should be put on the same basis as the Pittsburgh group with respect to westbound rates on window glass.

Defendant's witness testified that for many years the rates from central freight association territory west of the Sandusky-Galion line to the Grafton group were the same as to Baltimore; that they were later made with relation to the Pittsburgh rates, observing certain arbitraries and minima; and that the minima were necessary on account of the low scale of central freight association rates and for the protection of the rates from Pittsburgh to Clarksburg. On commodities taking less than sixth-class rates the minimum was originally 10 cents per 100 pounds, but was increased to 10½ cents, following the decision of *The Five Per Cent Case*, 31 I. C. C., 351. Defendants contend that the rate of $2.10 on sand from Silica to Fairmont or Clarksburg was reasonable for the period during which the shipments moved and that the application of the Pittsburgh group rate to such transportation would be unreasonable, for the principal reasons that the distance from Silica to Fairmont or Clarksburg is greater than the average distance to the Pittsburgh group; that Fairmont and Clarksburg are not on the main routes of east and west traffic; and that the line from Benwood Junction to those points, over which the traffic moves, traverses a rough and somewhat mountainous district, causing relatively higher costs of operation. It appears, however, that a very heavy coal traffic passes over this route northbound. No details of comparison of transportation conditions were submitted.

Comparison is made with the rates on glass sand from Ottawa, Ill., to Ohio points, prescribed by the Commission in *Boldt Co.* v. *C., R. I. & P. Ry. Co.*, 33 I. C. C., 8, as follows:

From—	Distance.	Rate per ton.	Ton-mile earnings.
	Miles.		*Mills.*
Silica to—			
Fairmont	299	$2.10	7.02
Ottawa to—			
Cincinnati	310	1.80	5.81
Columbus	355	2.00	5.63
Mount Vernon	393	2.00	5.09
Lancaster	397	2.20	5.54
Zanesville	434	2.20	5.07
Barnesville	494	2.40	4.86

Defendants claim that a fair comparison would take into consideration the average distance from Silica, Steiner, and Rockwood to the Grafton group, which would result in a ton-mile earning of about 6.46 mills, instead of 7.02 mills, as shown in the table. The record includes no comparison of traffic or transportation conditions as between sand moving from Ottawa and from the Silica

group, respectively. It appears, however, that the sand produced at Silica and neighboring points is ground from rock and is of a high grade. In explanation of the relatively low rates from Berkeley Springs on sand similar to that shipped from Silica, defendants urge the compelling competition of similar traffic from McVeytown, Pa., on the main line of the Pennsylvania Railroad between Altoona and Harrisburg, Pa., the rates from which point to central freight association territory were approximately the same as from Berkeley Springs for similar distances.

Defendants include in their rate comparisons proposed increased rates from Silica, Ottawa, Berkeley Springs, and McVeytown, authorized by the supplemental order of the Commission dated March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303. They take the position that inasmuch as the evidence in that proceeding, so far as it related to commodity rates, covered financial and operating conditions for the calendar year 1917, it may reasonably be assumed that the rates subsequently permitted to be increased were unreasonably low during that year. Defendant's witness testified that it was proposed under the order last cited to increase the rate from Silica to Pittsburgh group points from $1.48 to $1.70, but not to increase the rate of $2.10 to the Grafton group. In the latter prediction he was apparently in error, as the rate from Silica to Fairmont and Clarksburg was increased to $2.40 per ton, effective May 2, 1918. The rate of $1.70 to Pittsburgh group points became effective June 6, 1918, and similar percentage increases to other points shown in Table A, *supra*, became effective on the same date.

HALL, *Commissioner:*

The foregoing, slightly modified, is the statement of the pertinent facts by the examiner who heard the testimony and was served upon the parties in the form of a proposed report, containing his recommendations that the rates exacted for the transportation of shipments of glass sand from Silica to Fairmont should be held unreasonable to the extent that they exceeded a rate of $1.85, and that reparation should be awarded to complainant. Exceptions were filed by the defendants, except the Toledo, Angola & Western, to the recommendations of the examiner, principally on the ground of absence of showing as to similarity of transportation conditions in connection with the rates assailed and the rates used for comparative purposes. As to these exceptions it may be said that many of the rates compared apply for hauls in the same general territory and in some instances over the same lines for a substantial distance.

By supplemental complaint, filed after the hearing, the Director General of Railroads was made a party defendant. He answered but no further hearing was asked or had. By stipulation his certifi-

cate as to the necessity for increased revenues is a part of this record.

Under his General Order No. 28 the commodity rate to Fairmont and Clarksburg was increased to $2.60 and that to the Pittsburgh group to $1.90, effective June 25, 1918.

The contention of complainant for the same rate from Silica to Fairmont and Clarksburg as to Pittsburgh is not sustained. The propriety of the general method of constructing rates from territory west of the Sandusky-Galion line to the Grafton group can not be determined on this record; and the fact that certain westbound rates from the Grafton group are the same as from the Pittsburgh group is not a sufficient showing upon which to base a finding that the eastbound rates on a different commodity should be made on the same basis.

The rates on sand from Silica to the group in which Fairmont and Clarksburg are situated are not made with regard to distance, but by arbitraries over the rates to the Pittsburgh group. This resulted in rates to these points at the time of the hearing which were higher than the rates to Pittsburgh by amounts which exceeded the sixth-class arbitrary, although the rate on sand to Pittsburgh was but little more than one-half the sixth-class rate to Pittsburgh. Rates on sand in this territory are not generally made with definite relation to the sixth-class rates, but the rates from Silica to Fairmont and Clarksburg are in all instances a considerably greater percentage of sixth-class rates than the rates to other sand-consuming points. A rate from Silica to Fairmont and Clarksburg made with substantially the same relation to the sixth-class rate as the rate on sand to Pittsburgh bore to the sixth-class rate to Pittsburgh would have been approximately $1.70. The average distance from Silica to points in the Pittsburgh group, hereinbefore set forth, is 270 miles, and the $1.48 rate previously in effect on sand for this distance would yield 5.48 mills per ton-mile, about the same as a $1.70 rate would yield for the average distance of 310 miles to Fairmont and Clarksburg.

At the time of the hearing there were no through routes maintained by defendants for the movement of glass sand from Silica to Fairmont and Clarksburg, and it was necessary for the complainant to make separate shipping arrangements with the carriers at Silica and Toledo. The carriers forming part of most of the routes absorbed varying amounts of the rate up to Toledo, thus in a sense establishing joint rates, *National Dock & Storage Warehouse Co.* v. *B. & M. R. R.*, 38 I. C. C., 643, 650. They will be required to establish through routes and joint rates under section 6 of the act and in conformity with the Commission's rules.

Upon consideration of the whole record, including the certificate of the Director General, we adopt the foregoing statement of the examiner, as modified, and make it part of this report. We are of opinion and find that the rates on glass sand, in carloads, from Silica to Fairmont during the period from July 2, 1917, to May 2, 1918, were unreasonable to the extent that they exceeded a rate of $1.70 per ton. We are further of opinion and find that the rates on glass sand, in carloads, from Silica to Fairmont and Clarksburg are and for the future will be unreasonable to the extent that they exceed or may exceed a rate of $1.70 per ton, plus 15 per cent allowed under our order in *The Fifteen Per Cent Case*, *supra*, and an additional 20 cents per ton provided under General Order No. 28.

We further find that the complainant made shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceed those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 10205.

NEW ORLEANS REFINING COMPANY

v.

LOUISIANA RAILWAY & NAVIGATION COMPANY.

Submitted April 29, 1919. Decided September 25, 1919.

Demurrage charges collected on 156 tank-car loads of petroleum products shipped to Kassel, La., for export, found to have been unreasonable and unduly prejudicial to the extent that they exceeded those which would have accrued under the 10-days' free-time rule in effect at other Louisiana ports. Reparation awarded.

Rice & Lyons by *S. F. Brady* for complainant.

E. C. D. Marshall for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged at New York, N. Y., in the purchase and sale of petroleum and its products. By complaint filed June 3, 1918, it alleges that the demurrage charges exacted at Kassel, La., in March and April, 1917, on 156 tank-car loads of petroleum products for export, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is asked.

Kassel is located on defendant's line about 20 miles northwest of New Orleans, La., and on the traffic under consideration is a New Orleans rate point. The shipments moved from various points in Kansas, Oklahoma, and Texas to Kassel, from which point they were exported. Demurrage charges, all of which accrued prior to April 20, 1917, were collected in the sum of $1,315 on the basis of two days' free time applicable on domestic traffic under the average agreement plan as provided in the Uniform Demurrage Code and in accordance with defendant's tariffs.

Complainant contends that the charges assailed were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of 10 days' free time on each car. When the shipments moved 10 days' free time for unloading was allowed on all cars containing similar traffic for export or coastwise movement at New Orleans, Westwego, Avondale, Gretna, and Harvey, La., all New

Orleans rate points. Complainant contends, defendant admits, and the record shows, that demurrage charges on the 156 cars in question on the basis of 10 days' free time would have been $49, or $1,266 less than the charges collected. It is explained that Kassel was opened for export business shortly prior to January 1, 1917, and the question of establishing the same demurrage rules at that point as applied at New Orleans was presented to the defendant early in January, 1917. Defendant intended to establish these rules effective January 10, 1917, but through tariff complication this was not done. Complainant's side tracks at Kassel held 68 cars, and ample facilities were available for unloading a large volume of oil each day. The demurrage in question accrued because the steamers, in which the shipments were to be exported, were diverted to other ports on account of war requirements. Defendant under special permission was permitted on short notice to file its individual tariff making the 10-day rule applicable at Kassel, effective April 20, 1917.

Complainant contends and defendant admits that the charges in question were unreasonable to the extent that they exceeded those that would have accrued had the 10-day rule been in effect during the period of detention of the cars in question. Defendant expresses willingness to make reparation on the basis of the charges that would have accrued under a rule allowing 10 days' free time for unloading, and had previously proposed on the special docket to make reparation on that basis.

It is further urged that the charges were unduly prejudicial to complainant, to the advantage of exporters of like traffic from New Orleans and the other New Orleans rate points mentioned; and that the shipments were in fact sold in competition with similar shipments exported by complainant's competitors through other Louisiana ports.

The 10-day rule subsequently established at Kassel remained in effect until May 20, 1919, when the free time on export traffic was reduced to 7 days, following our findings in *Export Freight Free Time*, 47 I. C. C., 162.

Upon the record before us we are of opinion and find that the demurrage charges collected were unreasonable and unduly prejudicial to the extent that they exceeded those which would have accrued under the 10-days' free-time rule in effect at New Orleans and other Louisiana ports. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $1,266, with interest.

An order will be entered accordingly.

No. 10297.

FORT SMITH SPELTER COMPANY
v.
DIRECTOR GENERAL, ARKANSAS CENTRAL RAILROAD COMPANY, ET AL.

Submitted March 21, 1919. Decided September 25, 1919.

Rate on slack coal, in carloads, from Hume, Mo., to South Fort Smith, Ark., found unreasonable. Reparation awarded and maximum reasonable rate prescribed for the future.

C. D. Mowen for complainant.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in smelting ore at South Fort Smith, Ark., alleges by complaint seasonably filed that the rate charged on five carloads of slack coal shipped in December, 1916, and February, 1917, from Hume, Mo., to South Fort Smith was unreasonable, unjustly discriminatory, and in violation of the fourth section of the act. Throughout this report rates are stated in amounts per net ton, and, unless otherwise indicated, are those in effect at the time of movement.

The shipments consisted of "dead" slack coal, a low grade used by smelters. They aggregated 444,200 pounds and moved over the St. Louis & San Francisco Railway to Fort Smith, Ark., and the Arkansas Central Railroad beyond, 266 miles. Charges of $632.99 were collected at the applicable joint rate of $2.85. The contemporaneous intermediate rates were 55 cents to Pittsburg, Kans., and $1.10 beyond, a total of $1.65. The Kansas City Southern Railway, in connection with the Arkansas Central, maintained a rate of $1.10 from Pittsburg to South Fort Smith, 204 miles, and a rate of $1.25, or 15 cents higher, from Hume, 48 miles farther distant. These rates were all increased following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and again on June 25, 1918, pursuant to General Order No. 28 issued by the Director General of Railroads. Complainant asks for reparation on basis of a rate of $1.25 and for the establishment of a rate for the future based on $1.25, plus the above increases.

The following statement shows the former and present rates, together with distances and ton-mile earnings:

From—	To—	Miles.	Former rates.	Ton-mile earnings.	Present rates.	Ton-mile earnings.
				Mills.		*Mills.*
Hume	South Fort Smith via route used	266	$2.85	10.71	$3.50	13.16
Do	South Fort Smith via K. C. S	252	1.25	4.95	1.70	6.75
Do	Pittsburg via St. L.-S. F	62	.55	8.87	.90	14.52
Pittsburg	South Fort Smith via route used and via K. C. S.	204	1.10	5.39	1.60	7.84

Complainant cited the following rates from Hume and from Huntington, Ark., 30 miles south of Fort Smith, to points in Kansas, Missouri, Oklahoma, and Nebraska, together with the average distances and ton-mile earnings:

From Hume.			From Huntington.		
Rate.	Average distance.	Ton-mile earnings.	Rate.	Average distance.	Ton-mile earnings.
	Miles.	*Mills.*		*Miles.*	*Mills.*
$1.00	253	3.91	$1.10	213	5.11
1.10	214	5.14	1.20	271	4.42
1.16	237	4.89	1.45	291	4.98
1.25	262	4.77	1.50	404	3.71
1.31	276	4.74	1.75	470	3.72
1.40	304	4.60	1.85	504	3.67
1.50	330	4.54	2.00	507	3.94

Defendants admit that the rate charged was unreasonable but only to the extent that it exceeded the aggregate of the intermediate rates to and from Pittsburg, and state that there has been no movement from Hume to South Fort Smith by way of the St. Louis & San Francisco for more than two years.

We find that the rate charged was unreasonable to the extent that it exceeded $1.25 per net ton, and that the present rate via the route of movement is, and for the future will be, unreasonable to the extent that it exceeds or may exceed $1.70 per net ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of $355.36, with interest.

An appropriate order will be entered.

No. 10328.

WALTER A. ZELNICKER SUPPLY COMPANY
v.
DIRECTOR GENERAL AND SOUTHERN RAILWAY COMPANY.

Submitted February 4, 1919. Decided September 25, 1919.

1. Rate on angle and splice bars and track bolts, in less than carloads, from East St. Louis, Ill., to Boonville, Ind., not found to have been unreasonable.
2. Rate on old rails, in carloads, from and to the same points found unreasonable to the extent that it exceeded or may exceed the rate contemporaneously applicable on the same traffic from East St. Louis to Louisville, Ky. Relationship of rates prescribed and reparation awarded.

John D. Fidler for complainant.
L. H. Strasser for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the manufacture of railway and other supplies at St. Louis, Mo., alleges by complaint seasonably filed, as amended, that the rates charged by the Southern Railway Company, hereinafter termed defendant, on a carload of rails, angle and splice bars, and track bolts, shipped June 28, 1918, from East St. Louis, Ill., to Boonville, Ind., were unreasonable to the extent that they exceeded the rates contemporaneously applicable on these commodities to Evansville, Ind. It seeks reparation only.

Evansville is the southern terminus of defendant's Evansville division, which extends southwardly from Huntingburg, Ind., on the St. Louis-Louisville main line; and Boonville is an intermediate local point on that division, 17 miles northeast of Evansville. The shipment moved over the defendant's line, a distance of 229 miles. Charges were collected in the sum of $149.27, plus a war tax, based on 92,700 pounds of old rails at the sixth-class carload rate of $3.40 per long ton and on 2,803 pounds of bars and bolts at the fourth-class less-than-carload rate of 30.5 cents per 100 pounds. The rates contemporaneously in effect to Evansville were a commodity rate of $1.90 per long ton on old rails, in carloads, and the fourth-class rate of 25.5 cents per 100 pounds on the bars and bolts described, less than carloads.

In *Class and Commodity Rates*, 38 I. C. C., 411, we gave the defendant herein fourth section relief in connection with class and commodity rates from East St. Louis to Boonville and Evansville. Its witness testified that some years ago its tariffs carried a note providing that commodity rates, except on grain, from East St. Louis to Louisville, Ky., should be observed as maxima at main and branch line points on the St. Louis-Louisville line, including points on the Evansville branch, and that, except for the inadvertent cancellation of that note, the commodity rate of $2.80 to Louisville, in effect at the time of movement, would have applied on these rails. It expressed a willingness to apply to Boonville rates not in excess of those to Louisville, which, it concedes, would provide a reasonable and proper basis of rates on rails to Boonville, and to pay reparation upon that basis. There was no commodity rate to Louisville on angle and splice bars and track bolts, in less than carloads, and the class rates to Louisville were higher than to Boonville.

Complainant compares the rate on old rails with proportional and local rates, respectively, of 9 and 12.5 cents per 100 pounds contemporaneously applicable on wall plaster, in carloads, from East St. Louis to Boonville, yielding ton-mile earnings of 7.9 and 11 mills, respectively. The $3.40 rate yielded ton-mile earnings of 14.8 mills; rates of $1.90 and $2.80 would have yielded 8.3 and 12.2 mills, respectively. The distance from East St. Louis to Louisville via defendant's line is 273 miles and the $2.80 rate to that point, which was upon a water-competitive basis, yielded 10.3 mills per ton-mile.

Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

We do not find that the rate on the bars and bolts was unreasonable. We are of opinion and find that the rate on the old rails, in carloads, was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the rate contemporaneously applicable on the same commodity to Louisville, Ky.; that complainant made the above-described shipment and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid on the old rails and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation in the sum of $24.85, with interest.

An appropriate order will be entered.

No. 10830.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

DIRECTOR GENERAL, UNION PACIFIC RAILROAD COMPANY, ET AL.

Submitted April 24, 1919. Decided September 25, 1919.

1. Rate legally applicable on a carload of old rails and old rail fastenings from Denver, Colo., to Kansas City, Mo., reconsigned to Sioux City, Iowa, not shown to have been unreasonable.
2. Shipment found to have been overcharged and misrouted. Reparation awarded.

John D. Fidler for complainant.

Kenneth F. Burgess for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the purchase and sale of railroad equipment at St. Louis, Mo. By complaint filed May 27, 1918, as amended, it alleges that the rate charged by defendants on a carload of old rails and old rail fastenings shipped December 17, 1917, from Denver, Colo., to Kansas City, Mo., and reconsigned thence to Sioux City, Iowa, was unreasonable. Reparation is asked.

The shipment consisted of 4,400 pounds of old rail fastenings and 81,580 pounds of old rails and moved over the Union Pacific Railroad to Kansas City, thence over the Chicago, Burlington & Quincy Railroad through Pacific Junction, Iowa, and Ashland, Nebr., to destination. Charges were collected in the sum of $375.70 plus a $5 reconsigning charge at Kansas City. The rate charged was based on a commodity rate of $3.74 per gross ton to Kansas City and the fifth-class rate of 27 cents per 100 pounds beyond. The shipment was originally consigned to Schoper, Ill., and upon arrival at Kansas City it was found that an embargo existed at the billed destination which prevented the movement to that point. After considerable delay the shipper requested the Union Pacific Railroad to divert the shipment to Sioux City, Iowa, whereupon the Union Pacific Railroad issued an exchange bill of lading consistent with the shipper's instructions without showing therein either the rate or route and on February 19, 1918, delivered the car to the Chicago, Burlington & Quincy Railroad at Kansas City on a through waybill

from Denver to Sioux City with routing beyond Kansas City over the Chicago, Burlington & Quincy Railroad. No joint rate was applicable from Denver to Sioux City, and therefore the lowest combination of rates over the route of movement applied.

Inspection of the tariffs on file discloses that the lowest combination applicable was the rate of $3.74 per gross ton to Kansas City; $1.25 per gross ton on rails, equivalent to about 5.58 cents per 100 pounds, and $1.25 per net ton on rail fastenings, equivalent to 6.25 cents per 100 pounds, to Omaha, Nebr.; and the fifth-class rate of 8.7 cents per 100 pounds beyond. The shipment did not move through Omaha, but the combination based on that point was applicable under rule 5 (b) of Tariff Circular 18–A. The shipment was overcharged for the movement from Kansas City to Sioux City in the sum of $109.08. Also no authority appears under the tariffs of the Union Pacific Railroad for the reconsigning charge of $5 at Kansas City as the shipment was reconsigned on the basis of the rates to and from Kansas City. The tariffs provided that where no joint rate was published and the rates to and from the point of reconsignment were applied no charge would be made for reconsignment.

A rate of $1.25 per gross ton on rails and per net ton on fastenings also applied over the Chicago, Burlington & Quincy Railroad from Kansas City to Council Bluffs, Iowa, and a fifth-class Iowa distance rate of 8.4 cents per 100 pounds applicable on interstate business from Council Bluffs to Sioux City, 98 miles, over the Chicago & North Western Railway, making a rate from Kansas City to Sioux City over the latter route equivalent to about 13.98 cents per 100 pounds on rails and 14.65 cents on fastenings. The rate in connection with the Chicago & North Western Railway at Council Bluffs was 0.3 cents per 100 pounds less on rails and on rail fastenings than the rate applicable over the route of movement, and the distance is also considerably shorter. On account of the misrouting of the shipment the charges thereon were increased $2.58.

Complainant contends that the through rate from Denver to Sioux City was unreasonable to the extent that the component thereof from Kansas City to Sioux City exceeded 10 cents per 100 pounds. Comparative rates are cited as follows:

Commodity.	From—	Distance.	Rate per gross ton.	Earnings per ton-mile.
		Miles.		*Mills.*
Railway material	Kansas City, Mo., to Sioux City, Iowa	331.4	[1] $2.40	7.24
Rails	Kansas City, Mo., to Omaha, Nebr	196	1.25	6.38
Do	St. Louis, Mo., to Sioux City, Iowa	504.6	3.36	6.66
Railway material	....do	504.6	3.808	7.54
Rails	Chicago, Ill., to Sioux City, Iowa	489.79	3.36	6.65
Railway material	....do	489.79	3.808	7.77

[1] Per net ton.

The rate applicable from Kansas City to Sioux City, 319 miles, over the route of movement earned about 8.95 mills per ton-mile and the 10-cent rate asked would have earned about 6.27 mills per ton-mile.

Defendant Chicago, Burlington & Quincy Railroad expressed its willingness to make reparation on the basis of the rate applicable to and from Council Bluffs in connection with the Chicago & North Western Railway, but urges that the rate over the route of movement is not unreasonable considering the fact that a part of the haul is over a branch line of small traffic density from Ashland to Sioux City, 109 miles.

All of the components of the rates legally applicable were increased on June 25, 1918, pursuant to General Order No. 28 issued by the Director General of Railroads.

We find that the rate legally applicable over the route of movement was not unreasonable; that the shipment was overcharged and misrouted; that complainant paid and bore the charges as described; and that it has been damaged and is entitled to reparation in the sum of $116.66, with interest; $114.08 on account of the overcharge described, and $2.58 on account of the misrouting by the Union Pacific Railroad Company of the shipment in question.

An order will be entered accordingly.

No. 9865.

SHEBOYGAN ASSOCIATION OF COMMERCE
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted March 9, 1918. Decided September 25, 1919.

Class rates from Sheboygan, Wis., to points in Illinois south of the Toledo, Peoria & Western Railway, also to St. Louis, Hannibal, and Louisiana, Mo., and Keokuk, Iowa, not found unreasonable *per se* but found to have been unduly prejudicial to Sheboygan and unduly preferential of Milwaukee, Wis., to the extent that they exceeded the rates from Milwaukee by more than the arbitraries stated in the report. The Director General of Railroads not having been made a party defendant the complaint is dismissed.

F. M. Elkinton and *H. N. McEwen* for complainant.
Robert H. Widdicombe and *A. F. Cleveland* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation representing the commercial interests of Sheboygan, Wis., attacks the class rates from Sheboygan to points in Illinois south of, but not including points on, the line of the Toledo, Peoria & Western Railway, also to the adjacent cities of St. Louis, Louisiana, and Hannibal, Mo., and Keokuk, Iowa, as unreasonable, in violation of section 1 of the act, and unduly prejudicial to Sheboygan and preferential of Milwaukee and other points in southeastern Wisconsin, in violation of section 3. It is also alleged that the joint through rates exceed the combinations of intermediate rates based on Milwaukee in some instances and are, therefore, violative of the fourth section. We are asked to fix just and reasonable maximum rates for the future.

Upon hearing it developed that the complaint is practically confined to the rates on southbound less-than-carload traffic moving under classes 1, 2, and 3. There is very little carload traffic.

Sheboygan is situated on the west shore of Lake Michigan, 52 miles north of Milwaukee, on the Chicago & North Western Railway, which extends southward through Milwaukee to Chicago,

where it connects with lines serving the territory of destination involved. The traffic from Sheboygan to that territory consists largely of chairs and other furniture in considerable volume, enameled ware, gloves, and mineral waters. Similar articles are produced at Milwaukee, Janesville, Fort Atkinson, Waukesha, Beloit, and other points in southeastern Wisconsin, and are shipped to the same destination territory. The rates from these points to that territory are the same as from Milwaukee and will be referred to as the Milwaukee rates. The fourth section departures, as it developed upon the hearing, are confined chiefly to the commodity rates on furniture and enamel ware. There are, however, a few departures in class rates to a few points in southern Illinois. The rate situation complained of is illustrated by the following examples taken from complainant's exhibits. Rates stated in this report are those in effect at the time of hearing and prior to June 25, 1918, and are given in cents per 100 pounds.

Comparison of class rates and distances from Sheboygan, Wis., and from Milwaukee, Wis., to points shown.

From—	To—	Miles.	1	2	3	4	5
Sheboygan	Springfield, Ill.	322	60	50	40	25	20
Milwaukee	do	270	46.6	37.5	29.2	23.2	18.2
Difference		52	13.4	12.5	10.8	1.8	1.8
Sheboygan	Mattoon Ill.	308	63	52.5	42	26	21
Milwaukee	do	256	45.9	36.9	28.7	22.9	17.9
Difference		52	17.1	15.6	13.3	3.1	3.1
Sheboygan	St. Louis, Mo.	421	63	52.5	42	26	21
Milwaukee	do	369	51.8	42.2	33.1	26	20.6
Difference		52	11.2	10.3	8.9	.....	.4
Sheboygan	Centralia, Ill.	388	69.5	57.5	46	28.5	23
Milwaukee	do	336	50.7	41.3	32.2	25.6	20.1
Difference		52	18.8	16.2	13.8	2.9	2.9
Sheboygan	Olney, Ill.	367	74.5	62	49.5	30.5	25
Milwaukee	do	315	49.6	40.3	31.4	25	19.5
Difference		52	24.9	21.7	18.1	5.5	5.5
Sheboygan	Mount Vernon, Ill.	413	78	65	52	32	26
Milwaukee	do	361	51.8	42.2	33.1	26.3	20.6
Difference		52	26.2	22.8	18.9	5.7	5.4
Sheboygan	Cairo, Ill.	501	80	65	52	33	26
Milwaukee	do	449	55.2	45.6	36.2	28.2	22.2
Difference		52	24.8	19.4	15.8	4.8	3.8

It is seen that in general the ratio of difference in rates as between Sheboygan and Milwaukee on classes 1, 2, and 3 is much greater than the ratio of difference in distances. There is also a marked lack of consistency in the relationship of the class rates from these points. For example, the distance from Sheboygan to Springfield is but 19 per cent greater than the distance from Milwaukee to Springfield, while the differences in rates are, on first class 28.7 per cent; second class, 33 per cent; third class, 36.9 per cent; fourth class, 7 per cent; and fifth class, 9.9 per cent. To Cairo the difference in distance against Sheboygan is only 11.5 per cent, while the differences in rates on the five classes are, respectively, 45, 42, 43, 17,

and 17 per cent. Milwaukee has the same rate to St. Louis and Mount Vernon, the difference in distance being 8 miles, while from Sheboygan the rate to Mount Vernon is 15 cents over the rate to St. Louis for a like difference in distance and 26.2 cents over the rate from Milwaukee to Mount Vernon. Shipments from Sheboygan to the destination territory move through Milwaukee so that, regardless of destination, the difference in distance, Sheboygan over Milwaukee, remains constant. This relationship in rates is alleged to be unduly prejudicial, and we are asked to prescribe reasonable rates based upon distance.

Complainant introduced an exhibit to show that if the rates from Sheboygan were higher than the rates from Milwaukee by the same percentages that the distances from Sheboygan to the illustrated points exceed the distances from Milwaukee, the rates would be approximately as follows:

To—	1	2	3	4	5
Springfield	55.4	44.6	34.7	27.6	21.6
Mattoon	55	44.2	34.4	27.4	21.4
St. Louis	59	48.1	37.7	29.6	23.5
Centralia	58.5	47.6	37.1	29.5	23.1
Olney	58.3	46.7	36.4	29	22.5
Mount Vernon	59.2	48.2	37.8	30	23.5
Cairo	61.5	50.8	40.4	31.5	24.5

The same exhibit also indicates the rates that would apply if arbitraries of 10, 8, and 6 over the present rates from Milwaukee were used in constructing rates on the first three classes from Sheboygan. In certain instances such arbitraries would result in slight increases in the present rates from Sheboygan, but in most instances in material reductions. Complainant asserts that the present arbitraries, Milwaukee over Chicago, for a distance of 85 miles, are 6, 5, 4, 3, and 2 and that in comparison the arbitraries of 10, 8, and 6 on the first three classes would be proper, taking into consideration the lesser density of traffic between Sheboygan and Milwaukee as compared with that between Milwaukee and Chicago.

The rates from Sheboygan to the territory covered by the complaint are on group bases, both as to origin and destination. The Sheboygan group embraces a large territory in eastern and central Wisconsin, extending from a point just north of Milwaukee northward to Green Bay, and westward to the Mississippi River. Sheboygan is, therefore, in the southeastern portion of the group. The territory of destination is divided into six groups, all of which are represented in the above comparison, but which it is considered unnecessary to describe in detail. The rates from Milwaukee to the same territory are not grouped as to destination points, but are

usually made by the addition of differentials to the Chicago rates, which, in turn, are based upon the Illinois distance scale. This explains the lack of consistency in the relationship of rates from Sheboygan and from Milwaukee to different territories and to different points in the same territory. Contrary to accepted principles of rate making, the difference in rates to the more distant points is frequently greater than to the nearer points.

For the defendants it was shown that the rates from Sheboygan to the Springfield group are made by the application of the Chicago-St. Paul scale, beginning with 60 cents first class, and that the basis from Sheboygan to St. Louis is the St. Paul-St. Louis scale, beginning with 63 cents first class. This latter scale is 105 per cent of the Chicago-St. Paul scale, and, it was testified, is depressed by water-competitive influences on the Mississippi River. It is shown that wherever these depressed scales are found the spread between the Sheboygan and Milwaukee rates is less than where the rates from Sheboygan are not affected by such influences. The 80-cent scale from Sheboygan to Cairo, a two-line haul of 501 miles, is the same as the scale that applies from Chicago to the Missouri River, an average distance of 500 miles.

The Milwaukee rates, or small arbitraries in excess thereof, are applied by the Chicago, Milwaukee & St. Paul Railway and the Chicago & North Western Railway from points in Wisconsin on and south of the line of the former from Milwaukee to Madison via Watertown and on and east of the line of the latter from Madison to the Illinois-Wisconsin state line, and from many points on those roads in that portion of the state directly west of the territory just described.

In explanation of the use of differing bases of rates from Sheboygan and from Milwaukee it is asserted, in substance, that Milwaukee, like Chicago, is the terminus of eastern lines, and that the competition between the two cities and the lines serving them must be recognized in the rates from Milwaukee, but that in fixing rates from Sheboygan no similar necessity exists. Traffic from Milwaukee to the destination territory involved herein moves out over either the Chicago & North Western or the Chicago, Milwaukee & St. Paul, neither of which reaches that territory over its own rails. Nor is either of these roads at a disadvantage, as compared with the other, in handling such traffic. There is no necessity, therefore, for the Chicago & North Western, which is the only road that serves Sheboygan directly, to depress its rates from Milwaukee.

Under the present rate structure Sheboygan has the same rates as Milwaukee or Chicago to a large portion of western trunk line territory, the eastern boundary of which, in Iowa, is approximately at

Des Moines. The first-class rate from Chicago, Milwaukee, or Sheboygan to Des Moines is 60 cents, although the distance is 124 miles greater than from Chicago and 52 miles greater than from Milwaukee. Similar results are disclosed by a comparison with rates and distances to Omaha or Kansas City. So far, however, as there is grouping on traffic to western trunk line territory it is not the same as the grouping on traffic to the destination territory concerned herein. It is strongly contended by defendants that Sheboygan receives greater benefit than injury through the application of group rates, and that if the distance basis were to be observed as to rates from Sheboygan to all territories, its shippers would be the losers by the change. Witness for the defendants expressed the opinion that the consuming territory in which Sheboygan has the advantage in rates as compared with distance is more important to its shippers than is the territory in which it is at a disadvantage, but the evidence upon this point does not justify a conclusion. Whatever the situation may be as to the advantage of Sheboygan in other destination territories, it is no justification for maintaining unduly prejudicial rates to the destination territory with which we are concerned in this proceeding.

Defendants further contend that a revision of class rates from Sheboygan would necessitate a readjustment of rates from other points in the same group, many of which are important manufacturing points. But neither does this circumstance, if true, justify an improper relationship of rates as between Sheboygan and Milwaukee.

What has been said makes it clear that the rate disparities upon which the complaint is founded are due, principally, to the application of group rates at Sheboygan, a point near its group boundary, while the Milwaukee rates are based primarily upon distance. It is true that the method of making rates upon the group basis, although it necessarily involves inequalities at and near the group boundaries, has often been upheld by the Commission; that no group adjustment can effect exact justice in rate making; and that minor disadvantages to one point or another incident to such adjustments have under the circumstances of some cases been held not to constitute the undue prejudice made unlawful by section 3 of the act. *Southwestern Missouri Millers Club* v. *M., K. & T. Ry. Co.*, 22 I. C. C., 422, 424; *Connor Lumber & Land Co.* v. *A., C. & Y. Ry. Co.*, 40 I. C. C., 111, 113. It is equally true, as was stated in the report in the case first cited, that this Commission has "never approved a group rate which imposed upon any part of the group an unjust and unreasonable or unduly discriminating transportation charge, when that consideration was urged upon the attention of the Commission."

On June 25, 1918, the rates from both Sheboygan and Milwaukee were increased approximately 25 per cent by the Director General of Railroads, the discrimination against Sheboygan being thereby augmented. The rates attacked, which are those in effect prior to that date, are not shown upon the record to have been unreasonable *per se*, except in so far as they exceeded combinations of intermediate rates; but we are of the opinion and find that the rates attacked were unduly prejudicial to Sheboygan and unduly preferential of Milwaukee to the extent that they exceeded the rates contemporaneously in effect from Milwaukee by more than the following arbitraries on the respective classes, viz:

Classes	1	2	3	4	5
Arbitraries	10	8	6	5	4

As the complaint has not been amended to make the Director General a party defendant, no effective order for the future can be made. The same reasons, however, which prompted the finding that the rates assailed were unduly prejudicial lead us to the conclusion that the present rates should be revised in accordance with our findings herein.

There is no justification of the fourth section departures. It seems that, but for the intervention of federal control, the defendants would have removed them. This should now be done.

The complaint will be dismissed.

No. 10351.

INMAN, AKERS & INMAN

v.

DIRECTOR GENERAL, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

Submitted March 19, 1919. Decided September 26, 1919.

Rate on cotton in compressed bales from Mobile, Ala., to Savannah, Ga., for export, found unreasonable. Reparation awarded.

J. Eblin for complainants.
William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainants, Frank M. Inman, James S. Akers, Edward H. Inman, and Chessley B. Howard, copartners, with offices at Atlanta, Ga., were engaged, at the time this cause of action arose, in buying and selling cotton under the firm name of Inman, Akers & Inman. By complaint seasonably filed they allege that the first-class rate of 81 cents per 100 pounds charged by defendants for the transportation in January, 1915, of 238 bales of compressed cotton from Mobile, Ala., to Savannah, Ga., for export, was unreasonable; and that the acceptance of the shipment for transportation by defendant Louisville & Nashville Railroad without advising complainant that the rate of 35 cents, inserted in the bill of lading, had been canceled via its line as an initial carrier at Mobile, constituted an unreasonable practice in violation of section 1 of the act to regulate commerce. They seek reparation only. Rates are stated in this report in cents per 100 pounds.

At the outbreak of the European war in August, 1914, complainants had on hand at Mobile for export to Europe 238 bales of cotton aggregating 120,086 pounds. Failing to secure ocean transportation facilities from Mobile, complainants on January 20, 1915, tendered the cotton to the Louisville & Nashville with a bill of lading which called for transportation to Savannah and in which there were inserted a rate of 35 cents and routing via the Louisville & Nashville and Atlantic Coast Line. The shipment moved as routed and

charges of $972.70 were collected at the applicable joint first-class rate of 81 cents. Complainants seek reparation upon the basis of a commodity rate of 35 cents, or, in the alternative, upon the basis of the contemporaneously applicable sixth-class rate of 37 cents.

In support of their contention that the rate charged was unreasonable complainants point to the rate of 35 cents contemporaneously in effect over other routes and which was in effect via the route of movement prior to December 1, 1914. They also state that in the absence of commodity rates many carriers in the southeast by exceptions to the southern classification apply class J rates to the intrastate movement of cotton, and that class J rates closely approximate the sixth-class rates. They contend that it is impossible to move cotton profitably under the first-class rating provided by the southern classification. For defendants it was testified that class J rates are not ordinarily published for application to interstate shipments, that the commodity rate of 35 cents was an obnormally low water-competitive rate, and that its application via the Louisville & Nashville as an initial carrier at Mobile was canceled because for many years there had been no movement of cotton from Mobile to Savannah via that route. They admit, however, that cotton usually moves under commodity rates lower than the class rates otherwise applicable and signify a willingness to pay reparation on this shipment upon the basis of a rate of 60 cents, which they consider would have been reasonable. In *New Orleans Cotton Exchange* v. *L. & N. R. R. Co.*, 46 I. C. C., 712, the carriers proposed as part of a general readjustment of cotton rates in the southeast to increase to 60 cents the then existing commodity rates of 25 cents on compressed cotton and 35 cents on "carriers' privilege" cotton from New Orleans to Savannah and other south Atlantic ports and apply that rate as maximum on compressed cotton from intermediate points while maintaining higher rates from intermediate points on "carriers' privilege" cotton. Mobile is directly intermediate between New Orleans and Savannah by way of the Louisville & Nashville. While not affirmatively approving the proposed rates we stated that they would have the effect of greatly reducing the disparity existing between rates from New Orleans and intermediate points to south Atlantic ports, and granted fourth section relief in connection with the "carriers' privilege" cotton rates. Savannah is 588 miles from Mobile by the route of movement, and the rate proposed by defendants would produce ton-mile earnings of 2.04 cents. The short-line distance between Mobile and Savannah is 516 miles. In the *New Orleans Cotton Exchange Case*, *supra*, it was shown that the average ton-mile earnings on compressed cotton from 206 stations on the Southern Railway to Charleston, S. C., for distances ranging from

500 to 599 miles, were 2.14 cents. Defendants also cite a rate of 55 cents applying at the time of movement from stations on the Pensacola & Atlantic division of the Louisville & Nashville to Savannah for distances ranging from 263 to 416 miles.

Complainants' contention that the Louisville & Nashville should not have accepted the shipment without notifying them of the cancellation of the 35-cent rate via its line is similar to that considered in *McLean Lumber Co.* v. *L. & N. R. R. Co.*, 22 I. C. C., 349. We there held, differentiating such cases from cases arising under Conference Ruling 286 (f), superseded by Conference Ruling 474 (c), and related rulings, that the receiving carrier might forward the shipment over its line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor. That holding has been followed in subsequent cases and is adhered to in this case.

We are of opinion and find that the rate charged was unreasonable to the extent that it exceeded 60 cents per 100 pounds; that complainants made the shipment as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that they are entitled to reparation in the sum of $252.18, with interest.

An appropriate order will be entered.

No. 10381.

L. H. WHEELER ET AL.

v.

DIRECTOR GENERAL, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted April 10, 1919. Decided September 25, 1919.

Reconsignment and demurrage charges on a carload of lumber from Mosinee, Wis., to Mount Pleasant, Mich., found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.

A. E. Solie for complainants.

A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed December 30, 1918, complainants seek reparation for alleged unreasonable demurrage and reconsignment charges collected on a carload of lumber, shipped February 15, 1917, from Mosinee, Wis., to Manitowoc, Wis., and reconsigned thence to Mount Pleasant, Mich.

The shipment was delivered to the Chicago, Milwaukee & St. Paul Railway at Mosinee, February 15, 1917, consigned to complainants at Manitowoc, "% Ann Arbor." It moved over the line of the initial carrier to Junction City, Wis., thence Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter referred to as the Soo line, to Manitowoc. No line haul was available to the Ann Arbor Railroad, which reaches Manitowoc by car ferry across Lake Michigan, and the mention of that carrier in the bill of lading contemplated a reconsignment. The Soo line held the car for further instructions. On February 16, prior to its arrival, complainants executed a formal order, addressed to the agent of the Soo line at Manitowoc, to reconsign the shipment to Mount Pleasant, Ann Arbor Railroad delivery; but this order apparently was not received by the addressee, and, as hereinafter indicated, may have been mailed to the commercial agent of the Ann Arbor Railroad at Milwaukee, Wis., through whom complainants seem generally to have handled such matters. The shipment arrived at Manitowoc at 2.30 p. m., February 22. No diversion or reconsignment order was on file there, and on the same day the Soo line agent notified complainants by mail of the arrival of the car and requested instructions. By letter, dated February 24,

complainants replied that the shipment was to be reconsigned to Mount Pleasant and that the diversion order had previously been sent to the commercial agent of the Ann Arbor Railroad at Milwaukee. In response, on February 26, the Soo line agent advised complainants that the local agent of the Ann Arbor Railroad was without orders concerning the shipment. Reconsigning instructions were received on the afternoon of February 27, and on the following day the shipment was forwarded accordingly. Demurrage charges of $3, for the detention at Manitowoc, and a reconsigning charge of $2 were collected. These charges only are assailed, and, if applicable, the correctness of the amounts is not questioned.

The tariffs publishing the freight rate provided that the reconsignment and demurrage rules of the individual carriers would apply. The Soo line demurrage tariffs governing the shipment provided that "when orders for cars held for disposition or reconsignment are mailed, such orders will release cars at 7 a. m. of the day orders are received at the station where the freight is held, provided the orders are mailed prior to the date received; but orders mailed and received on the same date release cars the following 7 a. m." By the terms of the Soo line reconsignment rules, when reconsigning orders are received after a car has arrived and has been set out at the first destination a charge of $2 per car was and is applicable, in addition to accrued demurrage, storage, or switching charges.

The defendants attribute the detention of the shipment and the resulting charges to the tardy receipt of the reconsignment order, and insist that the facts of record do not establish any default on their part.

We can not accede to complainants' contention that the mere mailing of a reconsignment or diversion order, without regard to its delivery, was in law a compliance with the requirements of the governing tariffs; by the terms of those rules, only orders "received" sufficed, and complainants have not even shown when or to whom their order was mailed. Nor was complainants' communication of February 24, acknowledged two days later, advising that the shipment was to be reconsigned to Mount Pleasant, but also stating that the diversion order had been sent to the commercial agent of the Ann Arbor Railroad, in itself an order upon which the Soo line agent should forthwith have acted. It is not questioned that the car properly remained in the custody of the Soo line pending receipt of further instructions or that this carrier's reconsignment and demurrage rules governed.

We find that the charges assailed were within the terms of the applicable reconsignment and demurrage rules and that they are not shown to have been unreasonable. An order dismissing the complaint will be entered.

No. 10402.

E. I. DU PONT DE NEMOURS & COMPANY
v.
DIRECTOR GENERAL, LEHIGH VALLEY RAILROAD COMPANY, ET AL.

Submitted April 12, 1919. Decided September 26, 1919.

Rates on sulphuric acid, in tank-car loads, from Perth Amboy, N. J., to Philadelphia, Pa., found to have been and to be unreasonable. Reasonable rates prescribed and reparation awarded.

Harvey S. Farrow for complainant.
Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint seasonably filed, and as amended, the complainant, a corporation engaged in the manufacture of explosives, alleges that unreasonable and unduly prejudicial rates were charged by defendants on 89 tank-car loads of sulphuric acid shipped during the period from February 12, 1918, to October 19, 1918, both inclusive, from Perth Amboy, N. J., to Philadelphia, Pa. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per 100 pounds.

The shipments moved to Gray's ferry, Philadelphia, as routed by the shipper, over the Lehigh Valley Railroad to Metuchen, N. J., and the Pennsylvania Railroad beyond, 80 miles. The rate legally applicable on the shipments which moved prior to June 25, 1918, was a fifth-class rate of 12.5 cents, governed by the official classification. Effective June 25, 1918, the legally applicable rate was increased to 15.5 cents under General Order No. 28, issued by the Director General, which rate has since remained in effect. Some of the shipments were apparently overcharged, while others were undercharged. War taxes were also collected. A commodity rate of 9.5 cents, increased to 11 cents on April 25, 1918, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and again increased to 14 cents on June 25, 1918, pursuant to General Order No. 28, contemporaneously applied on sulphuric acid, in tank-car loads, from Perth Amboy to Philadelphia over the Lehigh Valley Railroad to Port Reading Junction, N. J.,

and the Philadelphia & Reading Railway to Gray's ferry, Philadelphia, 95 miles. Similarly a commodity rate of 9.5 cents, increased to 11 cents on May 3, 1918, following *The Fifteen Per Cent Case, supra*, and again increased to 14 cents on June 25, 1918, pursuant to General Order No. 28, applied on sulphuric acid, in tank-car loads, from Perth Amboy to Philadelphia over the Central Railroad of New Jersey to Oak Island Junction, N. J., and the Pennsylvania Railroad to Gray's ferry, Philadelphia, 107.7 miles. A 9.5-cent rate also applied on sulphuric acid, in carloads, in carboys or iron drums, over the Pennsylvania Railroad direct, 87 miles, and in tank cars over the Central Railroad of New Jersey to Bound Brook, N. J., and Philadelphia & Reading Railway beyond, 109.8 miles. These rates were increased over the respective routes to 11 cents on April 15, 1918, and June 3, 1918, following *The Fifteen Per Cent Case, supra*, and to 14 cents on June 25, 1918, pursuant to General Order No. 28. The distances shown are figured to Gray's ferry, Philadelphia, in all instances.

Complainant stated that the route of movement was selected because the shipper was located on the Lehigh Valley Railroad and because Pennsylvania Railroad delivery was necessary on account of the location of the consignee's plant at Gray's ferry, Philadelphia. Complainant asks reparation on the basis of a 9.5-cent rate on all shipments which moved prior to June 25, 1918, and on the basis of a 9.5-cent rate plus 25 per cent of the same on shipments which moved subsequent to June 24, 1918.

Defendants contended that considering the short haul from Perth Amboy to Philadelphia, and the fact that tank cars are generally returned or hauled to some other loading point empty, the rates legally applicable on the shipments were not unreasonable.

The car-mile earnings shown below were computed by complainant on a weight of 90,000 pounds per car, although the average loading of the shipments in question was greater than that. The 12.5-cent and 15.5-cent rates applicable over the route of movement yielded per ton-mile revenues of approximately 31 mills and 39 mills, respectively, and per car-mile earnings of $1.40 and $1.74, respectively. Rates of 9.5 cents, 11 cents, and 14 cents would yield over the route of movement per ton-mile revenues of approximately 24 mills, 28 mills, and 35 mills, respectively, and per car-mile earnings of approximately $1.07, $1.24, and $1.58, respectively. In *Du Pont de Nemours Powder Co.* v. *P. R. R. Co.*, 51 I. C. C., 453, we found a fifth-class rate of 15.5 cents charged on sulphuric acid, in tank-car loads, from Baltimore, Md., to Gibbstown, N. J., 146 miles, to have been unreasonable to the extent that it exceeded 10.5 cents. The 15.5-cent rate charged in that case yielded earnings of 21.2 mills

per ton-mile and, based on an average loading of 101,177 pounds, $1.074 per car-mile. Based on 90,000 pounds the car-mile earnings are 95.4 cents.

The evidence does not justify a finding of undue prejudice, but upon consideration of all the facts of record, we find that the rates legally applicable to the shipments in question were unreasonable to the extent that they exceeded 11 cents per 100 pounds on the shipments which moved prior to June 25, 1918, and 14 cents per 100 pounds, the amount to which an 11-cent rate would have been increased by the Director General's Order No. 28, on and after June 25, 1918; and that the present rate from Perth Amboy to Philadelphia via the Lehigh Valley and the Pennsylvania railroads is and for the future will be unreasonable to the extent that it exceeds or may exceed 14 cents per 100 pounds. We further find that the shipments were made as described and that complainant paid and bore the charges thereon; that it has been damaged to the extent of the difference between the transportation charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should take into consideration all overcharges and undercharges found to exist. This statement should be submitted to the defendants for verification and upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

An appropriate order will be entered.

No. 10405[1]

SOUTHPORT MILL, LIMITED,

v.

DIRECTOR GENERAL, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ET AL.

Submitted August 13, 1919. Decided September 30, 1919.

Rates on copra and palm-kernel products from New Orleans and Baton Rouge to various destinations found to have been unreasonable. Reparation awarded.

Carl Giessow, *Edgar Moulton*, and *S. R. Barnett* for complainants.

James M. Chaney, *Alex M. Bull*, *H. G. Herbel*, *J. O. Hamilton*, and *A. P. Humburg* for defendants.

R. V. Fletcher for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, *Commissioner:*

This case was made the subject of a proposed report by the examiner, which was served upon the parties. Exceptions thereto were filed by the complainants. This report is based upon the facts set forth in the proposed report with such modifications as from our examination of the record appear necessary.

Complainants are corporations engaged at New Orleans, Baton Rouge, and Eunice, in the state of Louisiana, in the purchase, manufacture, and sale of vegetable oils, cakes, and meals, and as crushers of oil-bearing materials. By complaints filed January 2, 1919, as amended, they allege that the rates charged by defendants on cer-

[1] This report also embraces No. 10405 (Sub-No. 1), Terminal Oil Mill Company *v.* Director General, Chicago & North Western Railway Company et al.; No. 10405 (Sub-No. 2), Same *v.* Director General and Missouri Pacific Railroad Company; No. 10407, Southport Mill, Limited, *v.* Director General and Yazoo & Mississippi Valley Railroad Company; No. 10408; Same *v.* Director General, Illinois Central Railroad Company, et al.; No. 10409, Same *v.* Director General, New Orleans, Texas & Mexico Railway Company, et al.; No. 10410, Terminal Oil Mill Company *v.* Director General, New Orleans, Texas & Mexico Railway Company, et al.; No. 10464, Southport Mill, Limited, *v.* Director General, Chicago & Alton Railroad Company et al.; No. 10519, Same *v.* Director General, Chicago, Peoria & St. Louis Railroad Company, et al.; No. 10557, Same *v.* Director General, Erie Railroad Company, et al.; No. 10558, Same *v.* Director General, Illinois Central Railroad Company, et al.; No. 10564, Same *v.* Director General, New Orleans, Texas & Mexico Railway Company, et al.

tain shipments of copra oil from New Orleans and Baton Rouge to Chicago, Ill., and from New Orleans to St. Louis, Mo., were unreasonable and unduly prejudicial in violation of sections 1 and 3 of the act to regulate commerce. Violations of section 10 of the federal control act are also alleged. The complaints were consolidated for hearing with other complaints filed on or after January 2, 1919, and all will be disposed of in a single report. Claims covering a number of the shipments were first presented to the Commission informally, but adjustment to the basis asked by complainants was declined by the carriers.

Complainants attack the rates applied from New Orleans, on palm-kernel oil to Kansas City, Kans., and Buffalo, N. Y., palm-kernel meal to Cedar Rapids, Iowa, and Peoria, Decatur, and Morris, Ill.; copra oil from New Orleans to Brooklyn, N. Y., Babbitt and Jersey City, N. J., and Kansas City, Kans.; copra meal to Peoria, Ill., and copra cake from Rolling Fork, Miss., to New Orleans. The shipments moved in carloads on various dates between June, 1917, and January, 1919. The allegation of undue prejudice is based upon the fact that the rates charged on these commodities exceeded the rates contemporaneously applicable between the same points on similar products derived from cotton seed, to which they are closely related and with which they come into active competition. Since the shipments moved, the rates on copra oil and palm-kernel oil have been reduced to the cottonseed-oil basis, and under rate authority No. 4703 of the United States Railroad Administration, cottonseed-meal rates were on March 1, 1919, made applicable to both copra and palm-kernel meal and cake from New Orleans and other points in the southern region to Ohio River crossings, St. Louis, Virginia cities, and points taking the same rates, or made in relation thereto, and to certain destinations in the eastern and western regions. This adjustment of rates for the future is satisfactory to complainants and leaves for consideration only the question of reparation and the fixing of a reasonable rate for the future on shipments of copra cake from Rolling Fork to New Orleans, this rate not having been changed to the cottonseed-meal basis.

Copra oil, meal, and cake are obtained by crushing copra, which is the dried meat of the coconut. The crude oil is used largely in the manufacture of soap, while the refined oil is used for making salad oils, margarine, and lard substitutes. The meal is used as a base or filler for mixed stock foods, and as such it comes into direct competition with cottonseed meal and peanut meal. Palm-kernel oil, meal, and cake are the products obtained by the crushing of palm kernels which are obtained from the palm-nut tree and imported from South Africa, the South Pacific Islands, and the Orient. Palm-kernel oil is

used principally in the manufacture of the lower grades of soap, and comes into competition with cottonseed oil. The meal is, like cottonseed meal and copra meal, used as a base for animal foods. The protein content of both copra meal and palm-kernel meal is less than that of cottonseed meal. Consequently they are of less value as animal foods and do not command so high a price as does cottonseed meal. On the ground of similarity of product, weights, value, use, transportation conditions, etc., complainants contend that their shipments should have been charged no higher freight rates than were contemporaneously applicable on like products of cotton seed.

The defendants assert that the rates charged were not only reasonable in and of themselves, but that they were not unduly prejudicial, and that the rates on cottonseed products used by complainants for comparative purposes were less than reasonable. At the present time the rates on cottonseed meal and cake within southern classification territory are the same as on fertilizers, or, in the absence of fertilizer rates, sixth class. The carriers allege that this is a maladjustment and that the rates on cottonseed products should be the same as those on feeds which are rated class D. Cottonseed meal was first placed on the fertilizer basis in 1889, and it appears that that basis has been continued in force since that time, although the record shows that there has been in recent years a large and growing consumption of cottonseed meal and cake for feeding purposes. Out of the total production of cottonseed meal and cake for the seasons of 1915–1916 and 1916–1917, only 30 per cent was used for fertilizer purposes, the largest relative volume being used for fertilizer purposes in southern classification territory. The carriers sought in the *Consolidated Classification Case* to establish class D, "feed" basis, on cottonseed meal and cake. In its report to the Director General of Railroads, *Consolidated Classification Case*, 54 I. C. C., 1, the Commission declined to recommend any changes in the existing ratings on fertilizer and fertilizer materials, including cottonseed meal.

The rates will now be considered in detail, special attention being given to the shipments of palm-kernel meal to Peoria and copra oil to Jersey City, which are fairly illustrative. All rates are stated in cents per 100 pounds.

PALM-KERNEL OIL.

During the months of June, July, and August, 1917, complainant Terminal Oil Mill Company shipped from New Orleans to Kansas City, 58 tank carloads of palm-kernel oil. Charges were collected on basis of a commodity rate of 41 cents, which was 3 cents higher than the fifth-class rate contemporaneously applicable on various oils under the governing classification. At the same time there was in effect

on cottonseed oil a commodity rate of 30 cents, and it is on basis of this rate that reparation is asked. On June 25, 1918, the rate on cottonseed oil was increased to 37.5 cents and the same rate has since been established on palm-kernel oil.

On the single shipment of this commodity from New Orleans to Buffalo in December, 1918, charges were collected on basis of the fifth class, official classification, rate of 59 cents. There was contemporaneously applicable on cottonseed oil, likewise rated fifth class, a commodity rate of 43 cents, which rate was, on January 29, 1919, made applicable also to palm-kernel oil. In the following table the average earnings on the cars of palm-kernel oil are compared with earnings on shipments of a like quantity of cottonseed oil between the same points.

	Average load.	Rate.	Revenue per car.	Distance, miles.		Car-mile earnings, cents.		Value per pound, cents.
				Short line.	Route traversed.	Short line.	Route traversed.	
Palm-kernel oil, New Orleans-Kansas City	66,070	41	$270.89	868	953	31.21	28.42	14.15
Cottonseed oil, New Orleans-Kansas City	66,070	30	198.21	868	953	22.83	20.69	14.875
Palm-kernel oil, New Orleans-Buffalo	49,909	59	294.82	1,281	1,452	23.01	20.30	17.25
Cottonseed oil, New Orleans-Buffalo	49,909	43	214.87	1,281	1,452	16.77	14.79	13.875

PALM-KERNEL MEAL.

Reparation is asked on carloads of this commodity shipped by complainant Southport Mill, Limited, from New Orleans, 34 to Peoria, 28 to Morris, and 1 to Decatur, all in the state of Illinois, and 14 to Cedar Rapids, Iowa. The shipments to the Illinois destinations were governed by the southern classification and charges were collected on basis of the class D rate of 29 cents. There was contemporaneously applicable on cottonseed meal a commodity rate of 22 cents. On May 10, 1918, the rate on palm-kernel meal was reduced to 24.5 cents, and on June 25, 1918, it was increased to 30.5 cents. On March 1, 1919, the rate on cottonseed meal, which had been increased to 27.5 cents on June 25, 1918, was made applicable to palm-kernel meal. In the following table the earnings on like quantities of cottonseed meal and palm-kernel meal are compared, Peoria being taken as typical of the three Illinois destinations:

	Average load.	Rate.	Revenue per car.	Distance, miles.		Car-mile earnings, cents.		Value per ton.
				Short line.	Route traversed.	Short line.	Route traversed.	
Palm-kernel meal, New Orleans–Cedar Rapids..	66,450	40	$265.80	1,021	1,296	26.04	20.51	$40.00
Cottonseed meal, New Orleans–Cedar Rapids..	66,450	29	192.71	1,021	1,296	18.87	14.87	51.80
Palm-kernel meal, New Orleans–Peoria.....	57,680	29	167.27	839	1,142	19.94	14.65	32.00
Cottonseed meal, New Orleans–Peoria.....	57,680	22	126.89	839	1,142	15.12	11.11	51.90

The shipments to Cedar Rapids were governed by the western classification and were charged the class B rate of 40 cents. At the same time there was in effect on cottonseed meal a commodity rate of 29 cents and reparation is asked on that basis. On June 25, 1918, the rate on palm-kernel meal was increased to 50 cents and on cottonseed meal to 36.5 cents. On March 1, 1919, the rate of 36.5 cents was made applicable also to palm-kernel meal. The following table, compiled from an exhibit introduced by witness for complainants, shows the average earnings on the cars of palm-kernel meal, the average loading of which was 66,450 pounds, as compared with earnings on similar quantities of competing products, although it appears that the average loading of the palm-kernel meal was greatly in excess of the average loading of other commodities named. Rates used are those in force during the period of movement.

Commodity.	Rate.	Revenue per car.	Car-mile earnings, cents.		Average value per ton.
			Short line.	Route traversed.	
Palm-kernel meal.....	40	$265.80	26.04	20.51	$40.00
Cottonseed meal.....	29	192.71	18.87	14.87	51.80
Peanut meal.....	29	192.71	18.87	14.87	53.80
Rice bran.....	25	166.13	16.29	12.82	40.00
Rice polish.....	25	166.13	16.29	12.82	57.00

On September 25, 1916, the cottonseed-meal rating from New Orleans to points in Illinois and Iowa was made applicable on palm-kernel meal, but on September 8, 1917, shortly prior to the date these shipments moved, the rates on palm-kernel meal were increased to the class D basis. The carriers assert that palm-kernel meal was first put on the cottonseed basis because of representations that it was a fertilizer and that when it was later found that palm-kernel meal was valuable only as an animal food it was placed on the "feed" basis. Complainants assert that they were the only producers of palm-kernel meal in the south and that no such representations were

made by them. In any event it appears that the cottonseed-meal rates from New Orleans to the destination territory here involved were not lower than the rates on peanut meal, rice bran, rice polish, and other products used for animal feeding, some of which were of considerably greater value than palm-kernel meal.

COPRA OIL.

One shipment of refined copra oil in barrels was made from New Orleans to St. Louis, six shipments of refined oil in barrels and in tank cars from New Orleans to Chicago, two shipments in tank cars from New Orleans to Kansas City, two shipments of crude copra oil in tank cars from Baton Rouge to Chicago, and numerous shipments from New Orleans to Brooklyn, N. Y., and Jersey City and Babbitt, N. J. The shipments to Chicago and Jersey City will be taken as illustrative. In the following table comparative earnings of the carriers on copra oil and cottonseed oil are stated, the weights shown for cottonseed oil being the same as the average loading of the copra oil, although it appears that the average loading of cottonseed oil is less than that of copra oil.

	Weight.	Rate.	Revenue per car.	Distance, miles.		Car-mile earnings, cents.		Value per pound, cents.
				Short line.	Route traversed.	Short line.	Route traversed.	
Copra oil, New Orleans-Chicago	70,680	47	$332.20	919	919	36.15	.....	20.50
Cottonseed oil, New Orleans-Chicago	70,680	27	190.84	919	919	20.77	.....	20.75
Copra oil, New Orleans-Jersey City	77,160	50	387.30	1,371	1,651	28.25	23.45	16.75
Cottonseed oil, New Orleans-Jersey City	77,460	44	340.82	1,371	1,651	24.86	20.64	17.75

When the shipments of copra oil were made to Chicago and St. Louis there was no rating on refined coconut oil in the southern classification; crude coconut oil was rated fifth class. The fifth-class rate to Chicago was 47 cents and this was the rate assessed upon the shipments to that destination. There was contemporaneously applicable on cottonseed oil a commodity rate of 27 cents which, on June 25, 1918, was increased to 34 cents. On May 1, 1918, a commodity rate of 32 cents was made effective on copra oil. This rate was on June 25, 1918, increased to 40 cents, and on January 27, 1919, copra oil was put on the cottonseed-oil basis, 34 cents.

The rate charged to Jersey City was the fifth-class rate of 50 cents, governed by the official classification. There was contemporaneously applicable on cottonseed oil a commodity rate of 44 cents which, on

February 1, 1919, was made applicable also to copra oil. Peanut oil and soya-bean oil had been put on the cottonseed-oil basis January 15, 1917.

COPRA CAKE.

Complainant purchased from a mill at Rolling Fork, Miss., three carloads of copra cake which it shipped to its own mill at New Orleans on August 1 and August 3, 1918. Charges were collected on basis of the class D rate of 28 cents. At the same time there was in effect on cottonseed cake a commodity rate of 14.5 cents. The average loading of these three cars was 66,010 pounds; the revenue per car over the route of movement, 278 miles, was $184.83; the car-mile and ton-mile earnings were respectively 66.5 and 2 cents. The revenue on a car of cottonseed cake of the same weight would have been $95.71; the car-mile and ton-mile earnings would have been 34.4 cents, and 1 cent, respectively. The value of copra cake at the mill was $33 per ton, while the value of cottonseed cake was $42.75 per ton. There was no regular movement of this commodity between Rolling Fork and New Orleans. Rates for the future are said to be under consideration by the Atlanta Regional Committee.

COPRA MEAL.

Reparation is asked on 13 carloads of copra meal moved from New Orleans to Peoria in March and April, 1918. The shipments were governed by southern classification and were charged the class D rate of 29 cents. At the same time there was in effect on cottonseed meal a commodity rate of 22 cents. On March 1, 1919, a commodity rate of 27.5 cents was made applicable on shipments of both commodities. The situation here presented does not differ materially from that considered earlier in this report as to shipments of palm-kernel meal to the same destination. The average loading of these 13 shipments was 39,725 pounds; the revenue per car over the route of movement, 839 miles, was $115.20, and the car-mile earnings 12.54 cents. The earnings on a car of cottonseed meal of the same weight would have been $87.40 and 10.42 cents, respectively. The copra meal was valued at $45 and the cottonseed meal at $51.90 per ton.

Numerous exhibits were filed by defendants in an effort to prove that the rates charged were not unreasonable. Comparisons are made with class and commodity rates to Atlanta, Augusta, and Birmingham, and with commodity rates on scrap iron, lumber, and molasses, from New Orleans to Peoria. The rate applied on copra oil from New Orleans to Jersey City is compared with rates on cottonseed oil from Dallas and Waco, Tex., to Chicago, and with rates on

other commodities in different sections of the country. These comparisons are of little probative force. *Curry & Whyte Co.* v. *D. & I. R. R. R. Co.*, 30 I. C. C., 1, 10. Defendants stress the fact that the volume of cottonseed products transported is far in excess of that of complainants' products. The products of the cottonseed-crushing season of 1916–1917 were in excess of 4,000,000 tons and moved from mills widely distributed throughout the south. The record shows that during the year 1917 less than 125,000 tons of copra were imported and that this commodity was being crushed at only 14 mills in the south. So recent is the development of this industry that it was not until September 8, 1917, that copra meal was given a rating in the southern classification. So far as the record indicates there are only two concerns in the country engaged in crushing palm kernels and it appears that the mills of those concerns have crushed less than 25,000 tons since 1914 when they commenced that work. During the latter part of the war with Germany, however, the importation of palm kernels was temporarily discontinued. Cottonseed has a tendency to heat and deteriorate rapidly. For that reason the crushing of the cottonseed crop must be accomplished by the southern mills within a few months after picking. In order that their mills might not remain idle during the remainder of the year the owners thereof have actively sought other commodities which might be handled by the same machinery and thus prolong the operating season. Furthermore, the ravages of the boll weevil have caused a cutting down of the cotton acreage in certain sections of the south and substitutes for cottonseed must be found to keep the mills going throughout the year. The carriers, in recognition of these conditions and of the competitive nature of the commodities, have put copra and palm-kernel products on the same basis as cottonseed products. This action on their part is not necessarily an admission that the higher rates charged were unreasonable or unduly prejudicial. They must be viewed in the light of all the circumstances and conditions existing at the time of movement. The test of reasonableness must be applied by reference to and upon consideration of all the pertinent facts, circumstances, and conditions affecting the rates in effect at the particular time. *Anadarko Cotton Oil Co.* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, 49.

The position of the complainants is that the rates charged were unreasonable and unjust and unduly prejudicial. While it has not been shown that complainants were damaged as a result of any undue prejudice that may have existed, the record is replete with evidence bearing upon the issue of unreasonableness. Defendants assert that the relatively smaller volume of tonnage justified the application of the rates charged on complainants' products. We

have said in numerous cases that volume of tonnage is an important element in the determination of reasonable rates; but we have repeatedly held that that element is only one of many that must be considered. Of no less importance are the items of car loading, value, car-mile earnings, similarity of transportation conditions, and general transportation characteristics of the commodities. It is abundantly shown in these cases that complainants' products are substantially similar in every respect to the commodities with which complainants' comparisons are made; that the value of complainants' products is less than that of similar products of cotton seed; and that the average loading of the shipments as to which reparation is asked was considerably greater than the average loading of cotton-seed products.

Upon consideration of all the facts of record we find that the rates charged were unjust and unreasonable to the extent they exceeded the rates contemporaneously applicable on similar products of cotton seed; that complainants made the respective shipments described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those herein found reasonable; that complainant Southport Mill, Limited, is entitled to reparation in the sum of $5,865.23, with interest; and that complainant Terminal Oil Mill Company is entitled to reparation in the sum of $5,229.05, with interest. An appropriate order will be entered.

No. 10441.[1]

WILLIAM VOLKER & COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted August 11, 1919. Decided September 30, 1919

Rate for the transportation of congoleum from eastern points to Denver, Colo., found to have been and to be unreasonable to the extent it exceeded or may exceed the rate contemporaneously in effect on linoleum and other floor coverings between the same points. Reparation awarded.

R. M. Neilson for complainant.

Henry G. Herbel for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, *Commissioner:*

With certain modifications which, from our examination of the record, appear necessary, this report is based upon the facts set forth in a report proposed by the examiner which was served upon the parties and to which no exceptions were filed. The case was submitted on the record made at the hearing.

It is alleged that the rate on congoleum, in straight carloads and in mixed carloads with similar commodities, from Philadelphia, Pa., and other eastern points to Denver, Colo., and other western points, was and is unreasonable and unduly prejudicial by comparison with the contemporaneous rates on oil cloth, linoleum, wood-grain flooring, and cork carpet, in straight or mixed carloads, from and to the same points. The establishment of reasonable rates for the future and reparation on four shipments of congoleum, in straight carloads, which moved from Philadelphia and Marcus Hook, Pa., to Denver within the statutory period are asked.

Congoleum, or asphalted paper felt, is described in the record as a felt-base linoleum. It is manufactured of felt saturated with asphaltum oil, coated on the back with a water-proofing paint, and

[1] This report also embraces No. 10441 (Sub-No. 1), William Volker & Company v. Director General, Atchison, Topeka & Santa Fe Railway Company, et al.

on the front with a heavy covering of paint. The designs and patterns, similar to those used on linoleum, are then stamped thereon. The use of congoleum is the same as that of linoleum. In addition, it is manufactured in an imitation hardwood finish, which is used as a border for rugs. It is of less value than the ordinary linoleum, and is frequently shipped in mixed carloads with linoleum and other floor coverings. Rates are stated in amounts per 100 pounds.

The rate charged on the shipments in question was the combination of the fourth-class rate to the Mississippi River and the third-class rate beyond, amounting to $1.34. The contemporaneous rate on linoleum, oil cloth, wood-grain flooring, and cork carpet was $1.02, and was published as a through rate. The rate now applicable on congoleum is $1.57, which is the combination on Chicago. The rate on linoleum and the other articles named is now $1.37½. Congoleum is now included in tariffs applying west of the Mississippi River and Chicago at the rate applicable on the other articles referred to, but the through rate claimed has not been made applicable to congoleum although it appears that authority to do so was conveyed to carriers under federal control by the Director General's freight-rate authority No. 6203 of April 5, 1919, and defendants not under federal control have expressed their willingness to concur in the proposed change. Complainant's claim for reparation is not opposed by defendants.

Upon all the facts of record we find that the rate of $1.34 applicable on these shipments was unreasonable to the extent it exceeded $1.02, that the present rates for the transportation of congoleum, in straight carloads, or in mixed carloads with oilcloth, lineoleum, wood-grain flooring, and cork carpet, from points in Atlantic seaboard territory to western points are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the rates contemporaneously maintained by defendants from and to the same points on the commodities named in straight or mixed carloads. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

In view of the fact that arrangements are under way to reduce the rate on congoleum to the basis applicable on linoleum and the other floor coverings mentioned, no order for the future will now be entered. Defendants will be expected to establish rates herein found reasonable within 60 days from the date of service of this report, failing in which the matter may be brought to our attention for appropriate action.

No. 9794.

F. H. COULTER ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted April 15, 1919. Decided September 26, 1919.

So long as provision is made in defendants' tariffs for the transportation of hogs, sheep, and goats, in double-deck cars from points on defendants' lines in South Dakota, such tariffs should provide that if a double-deck car is ordered and in lieu thereof two single-deck cars are furnished for the convenience of the carrier, they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of six days is allowed the carriers in which to furnish the car ordered.

Oliver E. Sweet, *E. M. Hendricks*, and *F. H. Coulter* for complainant and interveners.

J. N. Davis for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed July 19, 1917, complainants allege that defendants' tariffs are unreasonable in failing to provide, in connection with rates for the transportation of hogs, sheep, and goats from points in South Dakota to live-stock markets in other states, that when a double-deck car is ordered and for the convenience of the carrier two single-deck cars are furnished in lieu thereof, the shipment will be subject to the rate and minimum weight prescribed for the double-deck car ordered. They pray a rule to that effect for the future and complainant Coulter seeks reparation on one shipment of hogs made

July 8, 1916. By supplemental complaint filed prior to the hearing, the Director General of Railroads was made a party defendant.

Complainants testify that the live-stock industry is one of the principal occupations of the people of South Dakota, who ship large quantities of sheep and hogs as well as of cattle to various live-stock markets; that in the shipment of small live stock the use of double-deck cars is advantageous to both shippers and carriers, but that on many occasions when double-deck cars are ordered the carriers are unable or unwilling to furnish them and furnish in lieu thereof two single-deck cars.

Rates on hogs, sheep, and goats in single and double deck cars are published from many points on the lines of defendants to various markets, although from some points on the lines of some of the defendants no rates are published on hogs in double-deck cars. The rates are the same, when published, but the minimum weight provided in connection with single-deck cars 36 feet in length is 17,000 pounds on hogs and 12,000 on sheep, and the minimum weight in connection with double-deck cars of the same length is 22,000 pounds. On a shipment of 22,000 pounds of sheep from certain stations to South St. Paul, Minn., for example, the excess in charges on two single-deck cars over those on a double-deck car is from $4.40 to $17.20 per car, and on shipments of hogs the excess is from $26.40 to $50.40 per car. In addition the terminal charges on two single-deck cars are more than on one double-deck car.

The testimony was confined for the most part to conditions surrounding the shipment of hogs. Fat hogs can probably be loaded in single-deck cars to the minimum provided, but complainants testify that there is some difficulty in loading stock hogs for feeding in single-deck cars to the minimum of 17,000 pounds, ordinary shipments averaging 13,000 or 14,000 pounds, and double-deck cars can be loaded without difficulty to more than the minimum provided.

Special expedited live-stock trains are run from points on defendants' lines to live-stock markets, in some cases on one day and in others on two days in each week, and because of slow movement in ordinary trains practically all shipments are made on these days. It is urged that stock constituting less than a carload which could be included in a double-deck car must be held over to a subsequent date, or shipped as a separate carload with charges based on the minimum weight provided for that car. Estimates were made indicating that perhaps 25 per cent or more of the shipments would be made in double-deck cars if obtainable. It was represented that the use of a double-deck car is particularly advantageous in shipping stock which remains at the shipping point at the end of a shipping day, and on special orders for a definite number and weight of hogs.

In *Cleveland Provision Co.* v. *A. A. R. R. Co.*, 50 I. C. C., 293, we found that, so long as the defendants have provision in their tariffs for the use of double-deck cars, their tariffs should also provide that, when a double-deck car is ordered and for the convenience of the carriers two single-deck cars are furnished, the charges for the latter should be at the rate and minimum weight for the double-deck car ordered, provided two days' notice has been given by the shipper of his desire to use a car of the size ordered; but that the record failed to disclose any necessity for the rule at other than primary markets.

The rule has been established in connection with rates from the primary markets, and such a rule, though not general in its application to all stations, is also provided, in connection with rates from country stations in this and contiguous sections, on sheep to a considerable extent and on hogs to a less extent. Complainants ask that in order to afford them an equal opportunity with other shippers the same rule should be provided from their stations.

The defendants urge that single-deck cars are standard and move the bulk of the traffic; that double-deck cars are heavier, their cost of construction and upkeep greater, and their life shorter; that of the stock cars owned by the carriers operating in South Dakota 15 per cent are double-deck cars; that the restricted use to which double-deck cars can be put increases the empty-car mileage, which in some instances exceeds the loaded-car mileage; that the movement of live stock from country stations is not an all-the-year movement; and that to increase the supply of double-deck cars would add to that class of equipment, which lies idle for a portion of the year.

It is further urged that the rule would be subject to abuse in enabling shippers to use two cars for a shipment which should be loaded in one, thereby unnecessarily depleting the supply of cars, and necessitating switching and other terminal services on two cars instead of one.

They contend that there is not the same necessity for the application of the rule from country stations as from primary markets, which are located largely at division points where car-storage facilities are better, the movement larger and more regular, the tonnage adaptable to double-deck cars greater, and the use more advantageous than at country stations, from which by far the larger movement is in single-deck cars, and the demand for double-deck cars light. At many of these stations facilities for loading double-deck cars are not provided.

They further contend that the rates on live stock are low, and that on shipments handled in two single-deck cars at the minimum of a double-deck car the earnings per car-mile would be nearly cut in two, and from representative points to Chicago would be from 6 to 9 cents.

Complainants contend, however, that defendants are not warranted in assuming that either the double-deck or two single-deck cars will be loaded only to the minimum provided; that the rule is intended not so much to compel carriers to furnish two single-deck cars in place of a double-deck car, as to insure the supply of a double-deck car when ordered; that there is no showing that the revenue on a double-deck car is not adequate; that, distance considered, the earnings on a double-deck car are reasonable; that the reduction in revenue which the carriers would suffer when two single-deck cars are furnished instead of the double-deck car ordered also shows the penalty which the shipper is compelled to pay when a double-deck car is ordered and not furnished.

While defendants represent that during a portion of the year the supply of double-deck cars is not sufficient to meet the demand, they admit that such cars, when furnished, are more efficient means of transportation, and intimate that at least during a portion of the shipping season there is a sufficient supply to fill orders provided a reasonable time is allowed.

Defendants further show that, although the minimum on hogs in single-deck cars from South Dakota to live-stock markets is 17,000 pounds, the same as the minimum from points in southwestern territory, the minimum on a double-deck car from South Dakota is 22,000 pounds, while the corresponding minimum in southwestern territory is 34,000 pounds.

They also urge that the minimum on the single-deck car can be loaded, and that the crux of the complaint is the greater ease with which the minimum on the double-deck car can be loaded; but so long as they publish rates on double-deck cars with a low minimum the shippers have the right to demand such equipment or its equivalent.

Complainants admit that more time is needed to furnish a double deck car at country stations than at terminal or primary markets. Complainants suggest a notice of three days at country stations, and the carriers ten days or two weeks. Upon request for double-deck cars at country stations cars must ordinarily be brought from the points where they are stored, usually division points at which primary markets are located. It is true that by direct train service cars could be moved from such sources in a comparatively short time, but additional time is consumed in locating empty cars which can be used and, at times, cars are brought from comparatively distant points.

We find that, so long as the defendants make provision in their tariffs for the use of double-deck cars for the transportation of hogs, sheep, and goats from points on their lines in South Dakota, they

should provide that when such a car is ordered and for the convenience of the carrier two single-deck cars are furnished, the charges for the latter should be at the rate and minimum weight applicable to the double-deck car ordered, provided that six days' notice has been given by the shipper of his desire to use a double-deck car of the size ordered.

On the shipment upon which reparation is sought notice to the carriers was given but two days prior to the date of shipment, and reparation is denied.

No order will be entered at this time. If the tariffs of defendants are not brought into conformity with our conclusion herein within 60 days from the service of this report the matter may be again brought to our attention for appropriate action.

No. 10400.

GEORGE C. HOLT ET AL., RECEIVERS OF AETNA EXPLOSIVES COMPANY,

v.

DIRECTOR GENERAL, NEW YORK CENTRAL RAILROAD COMPANY, ET AL.

Submitted May 5, 1919. Decided September 25, 1919.

Rate of 99 cents per 100 pounds legally applicable on shipments of ivory-nut shavings, in carloads, from Rochester, N. Y., to North Birmingham, Ala., found to have been unreasonable to the extent that it exceeded 58 cents. Reparation awarded.

Edward E. Miller for complainants.
Claudian B. Northrop for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainants are George C. Holt and Benjamin B. Odell, as receivers of the Aetna Explosives Company, a corporation engaged in the manufacture of explosives. By complaint filed January 9, 1919, they seek reparation on two carloads of ivory-nut scrap or shavings shipped from Rochester, N. Y., to North Birmingham, Ala., in April and June, 1917, alleging that the rates charged were unreasonable. Rates hereinafter stated are in amounts per 100 pounds.

The shipments, which were in bags, moved over the New York Central, Pennsylvania, and Washington Southern railways to Potomac Yard, Va., and the Southern Railway beyond. The rate legally applicable was a third-class any-quantity rate of 99 cents, governed by the southern classification. The first shipment weighed 39,500 pounds, and charges were collected thereon in the sum of $525.35, at a first-class any-quantity rate of $1.33, governed by the southern classification and applicable on cocoa dust. This shipment therefore was overcharged 34 cents per 100 pounds, or $134.30. The other shipment weighed 60,360 pounds, and charges were collected in the sum of $597.56, at the applicable rate. Upon complainants' application to the Southern Classification Committee for a lower rating on the commodity, and effective September 8, 1917, a carload rating of sixth class, minimum 36,000 pounds, was established. The sixth-class

rate in effect from Rochester to North Birmingham when the shipments moved was 58 cents, and complainants ask reparation on that basis.

The vegetable ivory nut is the product of a palm tree which is found along the River Nile. This nut is used chiefly in the manufacture of buttons, and the shavings are produced in the operation of turning the buttons. These shavings are used by complainants as a substitute for corn meal in the manufacture of explosives and are claimed to be superior for that purpose and much cheaper, the shipments in question having cost the complainants $12 per net ton f. o. b. Rochester. By use of this substitute, corn meal, which has a food value, is saved. These shipments were the first from Rochester to North Birmingham, but complainants have received about four carloads per year since, and regular shipments between these points are contemplated. The majority of manufacturers of explosives throughout the country now use these shavings. They are rated fifth and sixth class, in carloads, in the western and official classifications, respectively.

Defendants consider that the present carload rating of sixth class is low, their traffic witness testifying that the desire of the carriers to encourage the movement of this commodity, especially during the recent war, had much to do with its adoption. It is explained that the third-class rating was accorded the shavings as appropriately related to the second-class rating on the nuts. It is also pointed out that scrap resulting from the manufacture of celluloid buttons takes first class in barrels or boxes, and that animal ivory scrap or shavings are rated second class. It is admitted that complainants' commodity is much lower in value. The small movement from Rochester to North Birmingham is mentioned as justifying a rate no lower than third class.

Upon all the facts of record we find that the charges collected were illegal and unreasonable to the extent that they exceeded those that would have accrued at a rate of 58 cents per 100 pounds; that the shipments were made as described and that complainants paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of $543.72, with interest. The Washington Southern Railway was not made a party, but may join in the payment of the reparation awarded.

An appropriate order will be entered.

No. 10374.

WINKLE TERRA COTTA COMPANY

v.

DIRECTOR GENERAL, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ET AL.

Submitted March 10, 1919. Decided September 25, 1919.

Rate of 27 cents per 100 pounds on terra cotta in carloads, from St. Louis, Mo., to New Madrid, Mo., by an interstate route, found to have been unreasonable to the extent that it exceeded 17 cents per 100 pounds. Reparation awarded.

D. V. Smyth for complainant.

C. C. P. Rausch for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture and sale of terra cotta at St. Louis, Mo. By complaint filed December 21, 1918, it alleges that the rate charged on four carloads of terra cotta shipped from St. Louis to New Madrid, Mo., between March 24, 1916, and August 17, 1916, was unreasonable, unjustly discriminatory, and unduly prejudicial, and prays reparation only. The claim was filed informally March 1, 1918. Rates are hereinafter stated in cents per 100 pounds.

The shipments aggregated 196,990 pounds, and moved over the lines of the Missouri Pacific Railroad and Terminal Railroad Association of St. Louis to East St. Louis, Ill., thence St. Louis Southwestern Railway to destination. Charges were collected in the sum of $531.87, at the joint class B rate of 27 cents. Reparation is sought on the basis of the contemporaneous class D rate of 17 cents. On April 1, 1917, after the shipments moved, the class D rate of 17 cents, minimum weight 36,000 pounds, was established on terra cotta from and to the points in question, which rate remained in effect until June 25, 1918, when it was increased to 21.5 cents under General Order No. 28 of the Director General of Railroads. The following comparisons of rates in effect when the shipments moved are offered by complainant:

Commodity.	From—	Distance.	Rate.	Earnings per ton-mile.
		Miles.	*Cents.*	*Mills.*
Terra cotta	St. Louis, Mo., to New Madrid	[1] 221	27	24.4
Dressed stone	Carthage, Mo., to New Madrid	431	14.5	6.7
Artificial stone	St. Louis, Mo., to New Madrid	[2] 200	10.75	10.8
Dressed stone	Distance rates over the St. L. S. W.	200	8	8.01
Do	do	221	10	9

[1] Via St. Louis Southwestern. [2] Via St. Louis-San Francisco and St. Louis & Missouri Southern.

Complainant testified that the value of terra cotta is about the same as artificial stone. The 17-cent rate would yield 15.4 mills per ton-mile. The car-mile earnings, based on 49,247 pounds, the average weight of the shipments, were 60 cents, and on the basis of the 17-cent rate would have been 38 cents. The average ton-mile revenue of the St. Louis Southwestern Railway for the year ended December 31, 1917, was 12 mills, and the average car-mile revenue for the same period was 23 cents.

Complainant further urges that terra cotta is regularly sold in competition with artificial stone and building stone; that it is manufactured in the same general manner as artificial stone; that the southwestern carriers have generally recognized this fact by authorizing class D rates upon terra cotta into Arkansas and Oklahoma; and that a lower scale of rates is maintained into Texas.

Defendants directed attention to the fact that New Madrid is located in the extreme southeastern corner of Missouri and that the route of movement, while partly over the main line of the St. Louis Southwestern through Illinois and Missouri, includes two branch-line hauls, one from Malden, Mo., and another from Lilbourn, Mo., to New Madrid. Defendants' witness testified that the reduction of the 27-cent rate on terra cotta to 17 cents on April 1, 1917, from St. Louis to New Madrid, was part of a general adjustment of rates on all classes and commodities from St. Louis to points in southeastern Missouri on the St. Louis Southwestern, St. Louis, Iron Mountain & Southern, and St. Louis-San Francisco railways, to conform to the provisions of the long-and-short-haul rule of the fourth section of the act to regulate commerce; that terra cotta, in carloads, was rated class D under the Arkansas exceptions to the western classification, making applicable the class D rate of 17 cents from St. Louis to Piggott, Ark., a point on the main line of the St. Louis Southwestern just over the Missouri-Arkansas state line; that when the rates to the main-line points in southeastern Missouri on the St. Louis Southwestern were made to conform to the fourth section by observing the rates to Arkansas points as maxima, that carrier voluntarily established the same rates to the branch-line points, largely in the

spirit of fairness, although not required under the fourth section; and that in consequence of this adjustment New Madrid was accorded the maximum main-line rate of 17 cents on terra cotta. It is further explained that for a great many years the rates from St. Louis were made on the basis of the distance from Carondelet, Mo., 7 miles south of St. Louis, but that when the adjustment referred to was made the average distance from the various freight stations in St. Louis was used, increasing the distance to points on the St. Louis Southwestern by 7 miles. It is urged that the rates to some of the points on account of the general adjustment and increased distance resulted in increased rates on some commodities, but that on this particular commodity, because of the Arkansas exceptions to the western classification, the rate was reduced. Defendants also cite the fact that terra cotta has been rated class B in the western classification for a long time, and they insist that the class B rate is reasonable. It is not disclosed whether there is any appreciable movement on the western classification basis.

Defendants' witness admits that some adjustment of the rates on terra cotta has been made on the basis of the rates applicable on stone, but urges that it does not follow that each station is entitled to such a basis on terra cotta.

We find that the rate assailed was unreasonable to the extent that it exceeded 17 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of $196.99, with interest. An appropriate order will be entered.

No. 10429.

E. E. DELP GRAIN COMPANY

v.

DIRECTOR GENERAL, PENNSYLVANIA RAILROAD COMPANY, ET AL.

Submitted May 3, 1919. Decided September 25, 1919.

Demurrage charges collected for detention at Bourbon, Ind., of various carloads of salvaged barley shipped from Brooklyn, N. Y., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

John R. Cassel and *Latimer P. Smith* for complainants.
James Stillwell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Edmund E. Delp and August F. Gruber, copartners engaged in the wholesale grain business at Bourbon, Ind., filed this complaint on January 25, 1919, to recover reparation for alleged unreasonable demurrage charges collected for the detention at Bourbon, in February, March, and April, 1918, of numerous carloads of salvaged barley shipped from Brooklyn, N. Y.

Complainants had secured from the Pennsylvania Railroad Company, during the pendency of an embargo, a permit to ship to Bourbon, at the rate of one car per day, a quantity of barley which had been salvaged from a fire in Brooklyn, to be conditioned and sold as hog feed. The movement was wholly over the Pennsylvania Railroad system, and bills of lading in evidence indicate that the shipments left Brooklyn at the rate of one and two cars per day. But many of the shipments were delayed in transit, and the order of their arrival at Bourbon was irregular, ranging from one to seven cars per day. The barley having been wet when shipped, and having moved during a period when the weather was very cold, many of the shipments arrived in a frozen condition, requiring about a day and a half to unload in each instance. Complainants operated under an average demurrage agreement with defendant, substantially like that provided by the National Car Demurrage Rules; and the delays in unloading were such that more debits than credits accumulated. Complainants admit that the charges were legally applicable, but insist that they accrued through no fault of theirs and solely because

of the bunching of the deliveries, which rendered it impossible to unload all the shipments within the free time provided. Defendants do not deny that the shipments were so bunched, but attribute the fact to congestion of traffic on their lines.

The case is within the principle of *Davis Sewing Machine Co.* v. *P., C., C. & St. L. R. R. Co.*, 51 I. C. C., 191. In that case shipments consigned to Dayton, Ohio, were held at various outside points under an embargo placed because of a flood which had temporarily demoralized railroad transportation in that city. After the embargo was lifted some of the shipments arrived so rapidly that they could not be unloaded within the free time, and demurrage charges accrued. The average demurrage agreement, under which the complainant in that case operated, provided, as in this case, that a shipper electing to take advantage of the average agreement should not be exempted from payment of demurrage occasioned by bunching of cars. In dismissing the complaint we said, in part:

> One of the purposes of the average agreement is, by credits for cars promptly released, to take care of detention caused by bunching and weather interference. *Alan Wood Iron & Steel Co.* v. *P. R. R. Co.*, 24 I. C. C., 27; *Michigan Mfrs. Ass'n* v. *P. M. R. R. Co.*, 31 I. C. C., 329; *Castner, Curran & Bullitt* v. *P. Co.*, 42 I. C. C., 3.

The Cummins amendment to the act to regulate commerce, which complainant cites as prohibiting any limitation of liability on the part of a carrier, has no application to the question here presented.

Upon all the facts of record we find that the charges assailed are not shown to have been unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

No. 10443.

GEORGE C. HOLT AND BENJAMIN B. ODELL, AS RECEIVERS OF AETNA EXPLOSIVES COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

Submitted May 8, 1919. Decided September 25, 1919.

Rates on carload and less-than-carload shipments of high explosives from Emporium, Pa., to Ironton, Ohio, found to have been unreasonable to the extent that they exceeded the first-class and double first-class rates, respectively. Reparation awarded.

Winthrop & Stimson by *Edward E. Miller* for complainants. *A. P. Humburg* and *Chas. J. Rixey* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The receivers of the Aetna Explosives Company, by complaint seasonably filed, seek reparation on two carload shipments and one less-than-carload shipment of high explosives, moving from Emporium, Pa., to Ironton, Ohio, during July, 1916, and January, 1917, alleging that the rates charged were unreasonable to the extent that they exceeded the joint through first-class rate on the carload shipments and double that rate on the less-than-carload shipment. Rates are stated in cents per 100 pounds.

The carload shipments, aggregating 47,674 pounds, on which total freight charges of $345.87 were paid, and the less-than-carload shipment, weighing 4,640 pounds, on which freight charges of $56.33 were paid, moved over the Pennsylvania and Baltimore & Ohio to Kenova, W. Va., thence via the Norfolk & Western to destination. The rate applicable to the carload shipments was 73.2 cents, which was the combination of the joint first-class rate of 48.2 cents published by the Pennsylvania Railroad from Emporium to Kenova, and the 25-cent minimum rate of the Norfolk & Western from Kenova to Ironton. The Norfolk & Western applies to high explosives the first-class rating, carloads, and double first class, less than carload,

with a proviso naming a minimum rate of 25 cents and a minimum charge of $2. Since its first-class rate from Kenova to Ironton is 7.9 cents, the minimum rate is applicable alike to the carload and less-than-carload shipments here involved. There was an undercharge on the carload shipment of $3.10. Charges were assessed on the less-than-carload shipment at the legally applicable combination rate, composed of 96.4 cents, double first class to Kenova, and 25 cents minimum rate, Kenova to Ironton.

The complainants show that the joint through first-class carload rate from Emporium to Ironton at the time these shipments moved was 48.2 cents, and upon the authority of *Aetna Explosives Co.* v. *C. & E. I. R. R. Co.*, 52 I. C. C., 26, and cases therein cited, holding that the joint through first-class rate, carloads, and double that rate, less than carloads, are reasonable maximum rates to apply on high explosives, urge that these shipments should have been charged accordingly.

Defendants were not represented at the hearing but the carriers have filed in the record a statement in which they say that at the time these shipments moved the Norfolk & Western Railway, believing that on principle the through class rates ought not to be applied to high explosives, did not concur in the tariff of the Pennsylvania Railroad applying that rating to high explosives from Emporium; that since then decisions of this Commission have been rendered holding otherwise, and this defendant has requested the Pennsylvania Railroad to amend the tariff noting its concurrence; and that they now submit themselves on the record to such order for reparation as this Commission may find warranted.

We find that the rate charged on the carload shipments was unreasonable to the extent that it exceeded the joint through first-class carload rate of 48.2 cents; and that the less-than-carload rate assessed was unreasonable to the extent that it exceeded double the first-class through rate, or 96.4 cents; that the Aetna Explosives Company made the shipments as alleged and paid and bore the freight charges herein found unlawful and has been damaged and that the complainants are entitled to reparation of $127.69, with interest, for which amount an order awarding reparation will be entered.

No. 10353.

ACME CEMENT PLASTER COMPANY
v.
DIRECTOR GENERAL, QUANAH, ACME & PACIFIC RAILWAY COMPANY, ET AL.

Submitted May 5, 1919. Decided September 26, 1919.

Rate of 32.1 cents per 100 pounds on finishing plaster from Acme, Tex., to Plasterco, Tex., by way of Altus, Okla., found to have been and to be unreasonable and unduly prejudicial to the extent that it exceeded or may exceed the contemporaneous rates from Okeene, Ideal, or Southard, Okla., to the same destination. Maximum rate prescribed and reparation awarded.

Moses N. Sale and *Sam H. West* for complainant.
C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the sale of cement plaster and other products of gypsum rock at St. Louis, Mo. By complaint, filed November 16, 1918, it alleges that the rate charged by defendants on a carload of cement plaster shipped June 24, 1918, from Acme, Tex., to Plasterco, Tex., by way of Altus, Okla., was unreasonable and unduly prejudicial, in violation of sections 1 and 3 of the act to regulate commerce. Reparation and reasonable and nonprejudicial rates are asked. Rates are stated in cents per 100 pounds.

The shipment consisted of 1,000 sacks of white finishing plaster aggregating 100,000 pounds, was routed in the bill of lading over the Quanah, Acme & Pacific Railway to Quanah, Tex.; St. Louis-San Francisco Railway to Altus, Okla.; Kansas City, Mexico & Orient Railroad and Kansas City, Mexico & Orient Railway of Texas to destination, and moved accordingly, a distance of 184.4 miles. Charges were collected thereon in the sum of $321, exclusive of the war-revenue tax, at the legally applicable rate of 32.1 cents, based on a commodity rate of 9.6 cents to Altus and the class C rate of 22.5 cents beyond. Complainant asks reparation on the basis of 13 cents per 100 pounds.

At the hearing it was stated for complainant that the shipment, while described in the bill of lading as cement plaster, more specifically consisted of finishing plaster and the cement plaster as a generic term embraces also finishing plaster. The evidence relates principally to the rates on finishing plaster and complainant is interested only in those rates.

When the shipment moved a rate of 13 cents, minimum 60,000 pounds, applied through Altus to Plasterco on finishing plaster in carloads, from the following Oklahoma points: Acme, 275 miles; Okeene, 292 miles; Primm, now Ideal, 285 miles; and Southard, 281 miles; and on cement plaster from Medicine Lodge, Kans., 387 miles. All of these points are located on the St. Louis-San Francisco Railway, except Acme and Medicine Lodge, the former being on the Chicago, Rock Island & Pacific Railway and the latter on the Atchison, Topeka & Santa Fe Railway, and the movement from and to these points is over the same line beyond Altus to Plasterco, 142.6 miles. For some time prior to December 5, 1916, the 13-cent rate from the points named was in effect, but no rate on the commodity in question was applicable from Altus to Plasterco as the class rates between those points were specifically restricted from applying on cement plaster and no commodity rate was in effect. On December 5, 1916, the class rates were made applicable from Altus to Plasterco on the commodity in question and resulted in a higher rate from that point to Plasterco than contemporaneously applied from the Oklahoma points named to Plasterco. The provisions of rule 77 of Tariff Circular No. 18–A were observed in the tariff naming the 13-cent rate from the Oklahoma points cited to Plasterco and constituted a substantial compliance with the provisions of the fourth section of the act. If the 13-cent rate had been legally applicable from Altus to Plasterco when the shipment moved, a through combination rate of 22.6 cents would have been obtained. The 13-cent rate was increased to 15 cents on June 25, 1918, pursuant to General Order No. 28 issued by the Director General of Railroads.

When the shipment moved there was also an intrastate route from Acme, Tex., to Plasterco over the Fort Worth & Denver City Railway to Chillicothe, Tex., and the Kansas City, Mexico & Orient Railway of Texas beyond, a total distance of 130.4 miles, and a joint class E rate of 17.5 cents, applicable on finishing plaster between points in Texas under exceptions to the western classification, applied over that route. This rate was increased to 20 cents on June 25, 1918, under General Order No. 28. It is stated that the 17.5-cent rate was established following our decision in *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 48 I. C. C., 312, in which we prescribed a joint class E rate of 17.5 cents for a distance of 130.4 miles

on traffic from Shreveport, La., to points in Texas other than in differential territory. The rate over the short route is not assailed in this proceeding.

When the shipment moved rates were in effect on cement plaster from Acme, Tex., as follows: 10 cents to Fort Worth, Tex., 196.4 miles; 11.5 cents to Cleburne and Dallas, Tex.; and 18 cents to Houston, Galveston, Bay City, and Corpus Christi, Tex., maximum distance about 600 miles. On June 25, 1918, the 10-cent rate was increased to 12 cents; the 18-cent rate to 20 cents; and the 11.5-cent rate to 13.5 cents, under General Order No. 28. Complainant also cites in comparison a rate of 32 cents on plaster from Blue Rapids, Kans., on the Union Pacific and Missouri Pacific railroads, to Plasterco, 590 miles, and it is testified that the carriers have given notice that this rate will be reduced to either 20 or 25 cents in the near future.

Defendants urged that the complainant should avail itself of the short route and seek to show that the rate over that route was reasonable. Defendants further urge that the rates of 13 cents cited from points in Oklahoma and Kansas to Plasterco, were extremely low, earning from 6.7 to 9.4 mills per ton-mile and from about 20 to 28 cents per car-mile on basis of the minimum of 60,000 pounds. The rate charged earned about 35 mills per ton-mile and about $1.74 per car-mile based on the actual weight, while the 13-cent rate asked would have earned about 14 mills per ton-mile and about 70 cents per car-mile on the actual weight and about 42 cents per car-mile on basis of the minimum of 60,000 pounds. The present rate which was increased to 39.5 cents on June 25, 1918, under General Order No. 28 earns about 43 mills per ton-mile and very substantial car-mile earnings.

Complainant further contends that its rates should be on a parity with the rates contemporaneously in effect from Oklahoma points to Plasterco; that it sells the identical kind of finishing plaster produced by its competitors at those points and cites that a consignee at Plasterco is anxious to purchase from complainant if equal rates are established.

We find that the rate assailed was, is, and for the future will be, unreasonable and unduly prejudicial to the extent that it exceeded or may exceed the rate contemporaneously maintained from Okeene, Ideal, or Southard, Okla., to Plasterco. We further find that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and those herein found reasonable; and that it is en-

titled to reparation in the sum of $191, with interest. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

An appropriate order will be entered.

No. 10426.

STEVE CHOP
v.
DIRECTOR GENERAL, GOULD SOUTHWESTERN RAILWAY, ET AL.

Submitted May 19, 1919. Decided September 26, 1919.

Rate of 17 cents per 100 pounds on staves and heading, in carloads, from Star City, Ark., to New Orleans, La., and present rate of 21½ cents, respectively, found to have been and to be unreasonable to the extent of their excess over the contemporaneous group rates from Gould and Furth, Ark., to the same destination. Reparation awarded.

A. D. Beals for complainant.

Henry G. Herbel, James M. Chaney, and *C. E. Fish* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed December 26, 1918, complainant, who is engaged in the manufacture of barrel staves and heading at Star City, Ark., alleges that the carload rates on staves and heading from Star City to New Orleans, La., were and are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded or exceed the rates contemporaneously in effect from Gould and Furth, Ark. He prays reparation on all shipments made within two years prior to the filing of the complaint and on those moving during the pendency of this case. Rates will be stated in cents per 100 pounds.

Star City is a local point on defendant Gould Southwestern Railway, which extends from Gould, the junction with the Missouri Pacific Railroad, formerly the St. Louis, Iron Mountain & Southern Railway, through Furth to Star City, a distance of approximately 18 miles. Furth is 13 miles west of Gould and 4.6 miles east of Star City. The distance from Star City to New Orleans is about 400 miles.

The rate from Star City to New Orleans, prior to June 25, 1918, was 17 cents and from Gould and Furth 15 cents; on that date, under General Order No. 28, issued by the Director General of Railroads, these rates were increased to 21½ cents from Star City and 19 cents from Gould and Furth.

Complainant, in support of his contention, refers to that portion of the state of Arkansas which is bounded by the Arkansas-Louisiana state line on the south, the line of the Missouri Pacific from Texarkana, Ark., to Newport, Ark., on the west, and by the line of the same carrier from Newport to the Mississippi River opposite Memphis on the north. He shows that within this area all points on defendants' main and branch lines and all points on defendants' short-line connections had the former rate to New Orleans of 15 cents and now have the 19-cent rate to that point, with the exception of Star City, and of Brinkley, which has a lower rate.

Staves and heading from points in this territory take lumber rates, and complainant relies largely upon our decision in *Ladd & Co.* v. *Gould Southwestern Ry. Co.*, 36 I. C. C., 179, in which the defendants were ordered to apply from Furth to interstate points rates on lumber not higher than rates from Gould.

After the decision in that case the junction-point rate to New Orleans from Gould was extended to all points on the Gould Southwestern, except Star City.

The defendants urge that the Missouri Pacific is under federal control, while the Gould Southwestern is not, but is in the hands of a receiver; that the operating cost in connection with lines separately operated is greater than for lines under one control; that points on short connecting lines are not entitled to the same measure of rates as are trunk-line points and should bear the burden of the disadvantage of their location; that if the junction-point rate is reasonable, a carrier is entitled to a higher rate for carrying traffic any distance beyond, and it is not unlawful to apply higher rates from points on the short line than from points on the trunk line, because of the greater expense with respect to the service from the former; that the practice has been to make rates from points on short lines a differential or arbitrary over the rates from junction points, but that this policy has been departed from because of competition with

other railroads intersecting or but a short distance from the short line or because of location on or in proximity to navigable streams on which traffic might be transported; and that wherever there is no controlling competition rates from points on short connecting lines should be made a reasonable differential higher than the rates from the junction points.

Defendants further urge that the Iron Mountain did not voluntarily adopt a blanket system of rates, but that the blanket was the result of highly competitive conditions. They call attention to points on other short-line carriers and branch lines and to points on certain water lines, from which rates are made by adding differentials to the junction-point rates. The points referred to by defendants are on branch lines and short lines connecting with the Missouri Pacific within the blanket territory, but all these points except those on the water lines are outside the territory from which the group rate applies. They urge that no competition of complainant at Star City with dealers at Gould and Furth has been shown, complainant's nearest competitor being at Winchester, Ark., on the main line of the Missouri Pacific, 16 miles south of Gould; that the differential at Star City is reasonable; that a differential basis obtains from Star City not only on traffic to New Orleans but to all destinations; and that no reason is shown for putting Star City on the same basis as Furth and Gould.

The distance from Newport, in the northern end of the blanketed territory, to New Orleans is 539 miles, 139 miles greater than from Star City. A 21½-cent rate, the same as the present rate from Star City, applies from a group considerably farther distant from New Orleans, extending throughout the northern section of Arkansas and into southern Missouri. One example of the junction-point rate being applied via all rail from points on a short line is Augusta, Ark., on the Augusta Railroad. This, defendant asserts, is because of the proximity of Augusta to the White River. It appears, however, that the water-and-rail rates to New Orleans from points reached by the Black & White River Transportation Company, including Augusta, are 5 cents higher than the group rates from Newport, the junction with the Missouri Pacific. With respect to the competition which, it is alleged, controls the rates from points on some other short lines or branch lines, the evidence is not entirely satisfactory.

While the principal consideration in the *Ladd Case*, *supra*, was given to rates to northern consuming or jobbing points and the blanketed territory there considered is not coextensive with the blanketed territory in this case, rates from Furth to New Orleans, the same as from Gould, were established as the result of that case, and

substantially the same contentions that are here presented were made and considered in that case. The facts disclosed lead to no different conclusion.

We are of the opinion and find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the group rates on like traffic contemporaneously maintained from Gould and Furth to New Orleans. We further find that complainant made shipments as described during the statutory period and paid and bore the charges thereon; that he was damaged thereby to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An order giving effect to the foregoing findings will be entered.

No. 10242.

WATERTOWN SASH & DOOR COMPANY ET AL.

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted August 23, 1919. Decided September 30, 1919.

Rates on glass, in carloads, from producing points in Kansas to points in South Dakota, found unduly prejudicial to the extent they exceed rates based upon the commodity rates to Sioux City, Iowa, Sioux Falls, S. Dak., or Pipestone, Minn., plus 75 per cent of the fifth-class rates thence to destinations.

Oliver E. Sweet and *E. M. Hendricks* for complainants.
R. Walton Moore and *J. N. Davis* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The complaint in this case, as amended, attacks as unreasonable and unduly prejudicial the rates on window glass, in carloads, from Caney, Coffeyville, and other producing points in Kansas and from points in the so-called "gas-belt" district to all points in South Dakota. The Watertown Sash & Door Company is engaged at Watertown, S. Dak., in manufacturing and wholesaling doors, molding, sash, plate and window glass, and other building materials. The Board of Railroad Commissioners of the State of South Dakota is cocomplainant.

While producing points in Oklahoma are not specifically mentioned in the pleadings, it is asserted by complainants that the area embraced within the "gas-belt" district includes certain Oklahoma points. Defendants oppose that interpretation of the complaint and insist that only rates from producing points in Kansas are involved. The so-called "gas belt" has been referred to in cases coming before the Commission and appears to be a group of points in Kansas and Oklahoma. *Investigation of Advances in Rates on Cement*, 20 I. C. C., 588; *Ashgrove Cement Co.* v. *A., T. & S. F. Ry. Co.*, 23 I. C. C., 519. The rates to South Dakota points on window glass from both Kansas and Oklahoma are made on the same basis and in the same amount as the rate from Coffeyville, Kans. The complaint, therefore, should be construed to involve rates from points in Kansas and such points in Oklahoma as lie within that territory commonly known, particularly in railroad circles, as the "gas belt."

The rates under complaint, with very few exceptions, are made by combination of commodity rates to Sioux City, Iowa, Sioux Falls, S. Dak., or Pipestone, Minn., plus the fifth-class rates from the basing points to destination. The result of this method of construction, complainants assert, is an increase in the rates for the hauls beyond the basing points out of all proportion to the increases in distances beyond the basing points to destinations.

As indicating the alleged excessive earnings on rates to South Dakota points complainants refer to the window-glass rates from Kansas points to Sioux City, Sioux Falls, Pipestone, and to Willmar, Minneapolis, and Duluth, Minn., and Chicago, Ill. The average ton-mile earnings are 11.7 mills for an average distance of 628 miles. To South Dakota points referred to as illustrative the earnings are, to Mitchell, 600 miles, 16.8 mills; to Huron, 650 miles, 16.5 mills; to Watertown, 657 miles, 16.1 mills; and to Aberdeen, 731 miles, 16.6 mills. A like representation is made of rates from Oklahoma points which produce ton-mile earnings of 9.8 mills for an average distance of 730 miles to the Minnesota points above named and Sioux City, Sioux Falls, and Chicago. The earnings on rates from Oklahoma points to the four South Dakota points average 14.1 mills for an average distance of 778 miles.

The comparisons submitted by complainants of rates from Kansas points are also representative of rates from the Oklahoma points involved. To Aberdeen from Sapulpa and Okmulgee, Okla., a joint rate of 62.5 cents is published, which is 2 cents greater than the combination of rates on Sioux Falls. Exemplifying the unusual increase in rates beyond the basing points in proportion to increase in distance, complainants show that Watertown from Sioux City is 42 per cent of the distance from Kansas points to Sioux City; the rate increase is 56 per cent. With respect to other South Dakota points the situation is approximately the same. Complainant insists that the rate factors beyond the basing points, Sioux City, Sioux Falls, or Pipestone, should increase in no greater proportions than the distances beyond the basing points bear to the distances to the basing points.

Complainants contend that the rate scheme whereby rates to South Dakota are made by combinations on Sioux City, Sioux Falls, or Pipestone should be condemned inasmuch as terminal services are not necessitated at those basing points as is contemplated in instances where combination rates are justified. Very frequently the traffic is received by the delivering line at points some distance south of Sioux City, Sioux Falls, or Pipestone. As an illustration, the Chicago, Rock Island & Pacific Railroad serves the Kansas district and extends north to Watertown, passing through Pipestone, the

basing point. No terminal services are performed at Pipestone, whereas the through rate consists of the local in and local out of that point.

To 18 points complainants show that the proportion of the haul within South Dakota to the total distance from Kansas producing points is 21.34 per cent and from Oklahoma points 17.94 per cent. It is argued that traffic density in South Dakota compares favorably with that of the territory through which traffic passes en route from Kansas and Oklahoma to South Dakota.

Merchants of Watertown and Aberdeen testified regarding the territory in which they engage in trade. Without naming specific destinations and distances from the jobbing points, it may be stated generally that the consuming territories served radiate approximately 100 miles from the respective jobbing points. The strongest competition is said to be from St. Paul, Minneapolis, Sioux City, and Sioux Falls, notwithstanding the fact that the stations at which the commodities are delivered to retail dealers are, with few exceptions, closer to Watertown and Aberdeen. Complainants allude also to the fact that whereas the movement to ultimate South Dakota destinations via Aberdeen is less than via Minneapolis the proportion of carload movement to the total movement is greater and the less-than-carload movement less when jobbed through Aberdeen.

An Aberdeen wholesaler testified that his manufacture and sale of window sash is confined to special sizes inasmuch as the present rates to Minneapolis enable the manufacturers there to place sashes of stock size in Aberdeen at a rate but 2.5 cents above the glass rate from Kansas points to Aberdeen. With more favorable inbound glass rates the witness stated he would manufacture stock sizes in preference to purchasing at Minneapolis.

Relative to the disadvantage of South Dakota jobbing points in meeting competition from Minneapolis and Sioux Falls complainant offered comparisons of inbound carload rates from Kansas points and outbound less-than-carload rates to various South Dakota, North Dakota, and Wyoming destinations via Minneapolis, Sioux Falls, Aberdeen, and Watertown. A table, representative of the exhibit, is attached and marked "Appendix A." These comparisons are not intended to suggest that equality with competitors in distributing to the various markets should be secured or maintained through the adjustment of inbound rates with respect to the outbound rates but are offered to substantiate the contention that the inbound rates themselves are disadvantageous to South Dakota points.

Defendants refer to the dominating influences that have controlled the rates from Kansas City to Sioux City, Minneapolis, and St. Paul, which have been largely affected by the rate adjustment from Chi-

cago and St. Louis to Kansas City, Omaha, Sioux City, Minneapolis, and St. Paul. These conditions, they say, have tended to keep the rates between the above-mentioned great commercial centers down to the lowest possible basis. Rates of the direct lines from Kansas and Oklahoma points to Minneapolis and St. Paul are equalized by the lines passing through Sioux City in connection with the Great Northern Railroad and the Chicago, St. Paul, Minneapolis & Omaha Railroad. To intermediate points, including Sioux Falls, Pipestone, and Marshall, the Minneapolis rate was not exceeded.

On glass the rates from the "gas-belt" district to Sioux Falls are the same as to Sioux City, though as a general proposition on other traffic the Sioux Falls rates are higher. Defendants, therefore, argue that the Sioux City, Sioux Falls, and Minneapolis rates are subnormally low and can not fairly be used as a measure of the reasonableness of rates to other points beyond the influences which necessarily caused such low rates; furthermore that the jobbing interests in South Dakota receive the benefit of the depressed rates due to the fact that they form a factor of the through rates published to South Dakota points.

Figures representing the density of traffic within the state of South Dakota for the fiscal year ended June 30, 1916, as compared to that of Iowa, Kansas, Missouri, Nebraska, Minnesota, and North Dakota were submitted with the view of justifying a higher scale of rates to points in South Dakota than to points in the states contrasted. The figures indicate a lower total of revenue tons per mile of railroad in South Dakota.

Defendants contend that a comparison of the rates from the producing points involved to the different jobbing cities in South Dakota, with rates for similar distances and with rates prescribed by this Commission, is probative of the reasonableness of the rates attacked. Rates on glass from Caney, Kans., to certain South Dakota destinations are compared with rates from other glass-shipping points in other territories, as may be illustrated by the following table:

From—	To—	Miles.	Rate.
			Cents.
Caney, Kans	Watertown, S. Dak	671	47.25
Chicago, Ill	Neleigh, Nebr	617	47.7
Caney, Kans	Huron, S. Dak	664	42.75
Hartford City, Ind	Irvington, Nebr	674	42
Caney, Kans	Pierre, S. Dak	783	50.85
Hartford City, Ind	Norfolk, Nebr	760	56.1
Columbus, Ohio	Paschal, Ga	723	76.5
Do	Atlanta, Ga	611	65.5
Caney, Kans	Rapid City, S. Dak	950	88
Do	Lost Springs, Wyo	934	90
Do	Deadwood, S. Dak	995	88
Do	Orin Junction, Wyo	950	94

NOTE.—Rates stated are those in effect prior to the 25 per cent increase under the Director General's General Order No. 28.

It is also shown that the rates to South Dakota are lower than fifth-class rates under the Missouri River-Nebraska scale for similar distances, that scale having been prescribed by the Commission in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201.

From such Kansas points as Augusta, Caney, Coffeyville, Fredonia, and Independence, to Yankton, Mitchell, Chamberlain, Aberdeen, and Mobridge, defendants show the percentage the through rates, applicable prior to June 25, 1918, composed of commodity rates to the basing point plus the class rates beyond, bear to the through class rates between those points. Watertown is not included in the compilation. The average of the through rates then applicable was 45.58 cents; of the concurrent fifth-class rates 67.3 cents. In other words the average of the actual rates was 67.18 per cent of the average of the fifth-class rates. The present rates are 25 per cent greater and the spread has been somewhat increased.

An exhibit was submitted by defendants based upon shipments that moved to various points in South Dakota, which they argue illustrates that there is no regularity of movement in regard to amount or distance when predicated solely upon rates paid and that elements other than the mere rates control the extent to which jobbing can be done from South Dakota points. It is shown that a much greater volume of outbound traffic moved to South Dakota destination points from Minneapolis and St. Paul than from Aberdeen regardless of the fact that the through rates from Kansas points via Minneapolis and St. Paul were greater in most instances cited by defendants than via Aberdeen. The volume of less-than-carload traffic outbound includes the inbound movement of glass from other points not named in the complaint, which constitutes the bulk of inbound traffic, particularly to Minneapolis and St. Paul. On this showing defendants contend that points in South Dakota jobbing glass are not disadvantaged by rates from Kansas and Oklahoma points.

Comparisons of total rates from producing points to ultimate destinations reflect both advantages and disadvantages to the South Dakota jobbing points. The results depend upon the points selected by the respective parties in serving their purposes. The only issue before the Commission is whether the inbound rates alone to South Dakota cities are unreasonable or unduly prejudicial.

Complainants submit that the subject matter of their complaint is practically identical with that involved in *Codington County Oil Co.* v. *A., T. & S. F. Ry Co.*, 53 I. C. C., 234. The Commission there had before it rates on petroleum and its products, in carloads, from the midcontinent oil field in Kansas and Oklahoma to points in South Dakota. Petroleum and its products are rated fifth class in the

western classification and the rates thereon were constructed in the same manner as the rates on glass here in issue. Glass is likewise rated fifth class. In the oil case we found the rates to be unduly prejudicial in so far as they exceeded rates made by adding the commodity rates to Sioux City, Sioux Falls, or Pipestone, and 75 per cent of the fifth-class local rates from such points to destinations on refined oil and 5 cents per 100 pounds less than such rates on road and fuel oils. Following the decision in that case and upon the facts of record in the instant case the finding herein should be that the through rates on window glass under complaint from points in Kansas and points in Oklahoma situated in what is commonly known as the "gas-belt" district are relatively unreasonable and unduly prejudicial and unduly preferential to competing points, such as Sioux City, Sioux Falls, and Minneapolis, to the extent they exceed the lowest combination of rates based upon the commodity rates to Sioux City, Sioux Falls, or Pipestone, plus 75 per cent of the fifth-class rates thence to destinations in South Dakota. Defendants should cancel all joint rates on glass, in carloads, from Coffeyville or any other point to Aberdeen or other South Dakota points, which are higher than combination rates based on the proposed findings herein.

APPENDIX A.

Window glass from Kansas points to stations shown through Minneapolis via Aberdeen.

To—	Distance to Minneapolis, 669 miles.		Rate to Minneapolis, 36.5 cents.		Distance to Aberdeen, 731 miles.		Rate to Aberdeen, 60.5 cents.[1]		Aberdeen's disadvantage in rate.
	Distance beyond.	Total distance.	Rate beyond.	Total rate.	Distance beyond.	Total distance.	Rate beyond.	Total rate.	
	Miles.	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Miles.*	*Cents.*	*Cents.*	*Cents.*
Summit, S. Dak.	212	881	36.5	73	74	805	20.5	81	8
Millbank, S. Dak.	190	859	32.5	69	96	827	23.5	84	15
Harlem, N. C.	312	981	45	81.5	85	816	24	84.5	3
Bowman, N. Dak.	546	1,215	81.5	118	260	991	60	120.5	2.5
Harlowton, Mont.	915	1,584	139	175.5	629	1,360	139	199.5	24
Lewiston, Mont.	977	1,646	147.5	184	691	1,422	147.5	208	24

[1] Rate used to Aberdeen, 60.5 cents, is combination on Sioux Falls.

Window glass from Kansas points to stations shown through Sioux Falls via Watertown.

To—	Distance to Sioux Falls, 555 miles.		Rate to Sioux Falls, 34 cents.		Distance to Watertown, 657 miles.		Rate to Watertown, 53 cents.		Watertown's disadvantage in rate.
	Distance beyond.	Total distance.	Rate beyond.	Total rate.	Distance beyond.	Total distance.	Rate beyond.	Total rate.	
	Miles.	*Miles.*	*Cents.*	*Cents.*	*Miles.*	*Miles.*	*Cents.*	*Cents.*	*Cents.*
Clark, S. Dak.	188	743	33	67	31	688	15	68	1
Frankfort, S. Dak.	159	714	30	64	60	717	18.5	71.5	7.5
Faulkton, S. Dak.	181	736	33	67	105	762	24	77	10
Lebanon, S. Dak.	213	768	36	70	138	795	27.5	80.5	11.5
Yale, S. Dak.	157	712	24	58	55	712	18	71	13

CLARK, *Commissioner:*

With the exceptions hereinafter noted the foregoing report and finding, in which minor corrections have been made, were proposed by the examiner and served upon the parties. Oral argument was waived, but exceptions to the report and conclusion proposed were filed by defendants.

The complaint in this case attacks as unreasonable and unduly prejudicial the rates on window glass in carloads from Caney, Coffeyville, and other producing points in Kansas and from so-called "gas-belt" district producing points. Complainants contend that certain Oklahoma points are included within the "gas-belt" district. This contention is opposed by defendants, who assert that Oklahoma points are neither in the "Kansas gas belt" nor the "gas-belt" district. The evidence is directed to representative points in Kansas

that are clearly within the "gas-belt" district, as that term is used in *Investigation of Advances in Rates on Cement*, 20 I. C. C., 588, and to representative points in Oklahoma including Sapulpa and Okmulgee.

Defendants object to certain comment of the examiner with respect to the inclusion of lines in the western part of the state of South Dakota in figures submitted by them representing the density of traffic within that state for the fiscal year ended June 30, 1916, on the ground that it is an apparent criticism and not warranted in view of the scope of the complaint. For similar reasons exception is taken to the views of the examiner with respect to an exhibit introduced by defendants in substantiation of their assertion that points in South Dakota jobbing glass are not disadvantaged by the rates from Kansas and Oklahoma points. The portions of the proposed report objected to are merely *obiter dicta*, and they have been eliminated.

Defendants except to the proposed finding on the ground that the rates complained of are not unreasonable; that the finding would be a precedent for reductions on other commodities; and that the reduction in rates, considered in connection with reductions which have been effected pursuant to our decision in *Codington County Oil Co.* v. *A., T. & S. F. Ry. Co.*, 53 I. C. C., 234, and possible reductions in No. 10316, in which a tentative report has been served, will result in a depletion of the carriers' revenue which they can ill afford at the present time. No statement of fact is excepted to. The fact that correction of rates that are unduly prejudicial will or may require reductions or corrections as to other commodities can not be accepted as a valid defense. Furthermore, it is not shown that the proposed finding will result in undue depletion of the revenues of the carriers.

Upon all the facts of record we find that the rates on window glass in carloads complained of are not unreasonable *per se*, but that they are, and for the future will be, unduly prejudicial to the extent that they exceed, or may exceed, the lowest combination of rates constructed by using the commodity rates to Sioux Falls, S. Dak., Sioux City, Iowa, or Pipestone, Minn., and adding thereto 75 per cent of the fifth-class rates from those basing points to destinations. The indefinite phraseology of the complaint and the conflicting interpretations placed thereon by the parties as to the area included within the so-called "gas-belt" district render impossible the entry of an order embracing points in Oklahoma. An appropriate order relative to the rates from Kansas producing points will be entered.

CHICAGO & CALUMET RIVER RAILROAD COMPANY.

SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFICATION TERRITORY.

Submitted May 21, 1919. Decided September 30, 1919.

Chicago & Calumet River Railroad Company found to be a common carrier which may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation must not be more than is reasonable; and a complete and specific statement of the basis agreed upon must be filed with the Commission immediately upon its adoption.

Borders, Walter & Burchmore for Chicago & Calumet River Railroad Company, petitioner.

D. P. Connell for Director General of Railroads and carriers under federal control.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

This proceeding is upon a petition of the Chicago & Calumet River Railroad Company, which alleges that material changes have taken place since the hearing in 1914 and prays that, after further hearing, we shall enter a report and order—

adjudging your petitioner to be a common-carrier railroad, subject to the act to regulate commerce, further adjudging it to be entitled to just and reasonable divisions and allowances out of interstate freight rates applying to and from Chicago, said divisions or allowances to be paid and absorbed by the various line-haul carriers without any payment by shippers of charges over and above said Chicago rates.

At the hearing counsel for the petitioner said: "All we are really asking in this case is recognition of the rights and status of this

company" as a common-carrier railroad. On argument counsel for petitioner and counsel for the Director General of Railroads and the trunk-line carriers joined in the request for a determination of petitioner's status, and agreed that the parties probably could adopt some basis and submit it to us for approval, if from the cost data submitted we were unable to prescribe the maximum division or switching absorption in petitioner's behalf.

The petitioner is a switching road incorporated in August, 1901, under the general railroad incorporation laws of Illinois, and operating within the Chicago switching district. It owns 1.68 miles of main track and 3.50 miles of yard track and sidings, all standard gauge and laid with 90-pound steel rails. In addition it owns some tracks laid on land leased from the New York, Chicago & St. Louis Railroad, and has certain trackage rights which it is unnecessary to describe in detail. None of its tracks are within any plant.

The railroads with which it connects, either directly or by means of trackage rights, are the Pennsylvania Company; New York, Chicago & St. Louis; Chicago & Western Indiana; Baltimore & Ohio Chicago Terminal; Indiana Harbor Belt; Erie; Wabash; Chicago, Indianapolis & Louisville; Elgin, Joliet & Eastern; and Kensington & Eastern. Its equipment consists of 6 locomotives and 54 freight cars. It holds itself out as a common carrier and complies with the various federal and state requirements applicable to such carriers. In December, 1914, the Illinois Public Utilities Commission held it to be a common carrier. It issues bills of lading and waybills on through shipments, and collects freight charges on such shipments in the usual course of business. It has no express, mail, or passenger service.

The Western Steel Car & Foundry Company, hereinafter called the car company, controls the petitioner through the ownership of all but seven qualifying shares of its capital stock. The president and vice president of the former are also officers of the latter, but petitioner keeps its own accounts and has its separate operating force of 79 employees, who receive approximately the same wages as those of other roads in the Chicago switching district.

In addition to the owning car company, the petitioner serves the Ryan Car Company, the Camel Company, and the General Fuel & Supply Company, the three last named having no affiliation with petitioner or owning company. The tracks owned by the four industries, in the order named, are: 25 miles, 10 miles, 600 feet, and 500 feet. The Koppel Industrial Car & Equipment Company and the Fidelity Storage Company contemplate locating on petitioner's tracks. As an incident to simplifying the Chicago terminal situation the Railroad Administration has directed that all switching for the Ryan Car Company shall be done by petitioner.

There is a public team track, adjacent to two streets, over which have been handled for various persons shipments of coal, slag, crushed stone, tar, and street-paving compound. About 500 cars were handled on this track during 1914 and 600 in 1915. For the last year and a half the number has been about 25 a month.

Below is given an analysis of petitioner's traffic for the year 1918:

Analysis of switching traffic and revenue of the Chicago & Calumet River Railroad for the year ended December 31, 1918.

Switching movements.	Cars.		Revenue.		
	Number.	Per cent of total.	Amount.	Per cent of total.	Average per car.
Western Steel Car & Foundry Co.:					
Loads	17,681	33.63	$51,443.75	55.06	$2.91
New and repaired cars	28,729	54.64	31,514.28	33.73	1.10
Total	46,410	88.27	82,958.03	88.79	1.79
Independent shippers:					
Loads	1,811	3.45	5,727.00	6.13	3.16
Repaired cars	4,354	8.28	4,743.00	5.08	1.09
Total	6,165	11.73	10,470.00	11.21	1.70
Total, all cars	52,575	100.00	93,428.03	100.00	1.78
DISTRIBUTION.					
Interchange switching:					
Western Steel Car & Foundry Co.—					
Loads	10,563	20.10	33,648.00	36.01	3.19
New and repaired cars	6,645	12.62	5,474.25	5.86	.83
Total	17,208	[1] 32.72	39,122.25	41.87	2.27
Independent shippers:					
Loads	1,811	3.45	5,727.00	6.13	3.16
Repaired cars	4,354	8.28	4,743.00	5.08	1.09
Total	6,165	[2] 11.73	10,470.00	11.21	1.70
Total interchange	23,373	44.45	49,592.25	53.08	1.78
Plant and interplant switching:					
Western Steel Car & Foundry Co.—					
Loads	7,118	13.54	17,795.00	19.05	2.50
New and repaired cars	22,084	42.01	26,040.78	27.87	1.18
Total plant	29,202	55.55	43,835.78	46.92	1.50
Total, all cars	52,575	100.00	93,428.03	100.00	1.78

NOTE.—The percentages given are of the total cars handled interchange and interplant. The percentage as of the total interchange (excluding interplant and intraplant) should be [1] 73.63 and [2] 26.37.

There is a slight discrepancy between this statement and the annual report for 1918 in the total number of cars handled, the statement showing 52,575 and the report 52,653.

The average distance which shipments move over petitioner's rails is as follows: For shipments to the car company, other than lumber, three-fourths of a mile; lumber to the car company, one-eighth of a mile; repaired and rebuilt cars from the car company, one-fourth of a mile; to or from the Ryan Car Company, two-fifths of a mile;

and to the General Fuel & Supply Company, three-fourths of a mile. None of these distances include such movements as may be necessary in classifying or weighing a car. The haul over the tracks of the car company to spot cars ranges from 500 to 1,000 feet. Cars are spotted for the Ryan Car Company when desired, but that company has a locomotive and sometimes prefers to do its own spotting.

It is customary to apply the Chicago rates on interstate carload traffic to or from industries and private sidings in the Chicago switching district upon which the revenue is $15 or more per car, the carriers having the line haul absorbing terminal charges where necessary. Eleven trunk lines provide for the absorption of petitioner's switching charges on interstate carload traffic, as follows: $3 per loaded car, including the return movement of the empty car; $1 per new car outbound; and $1.50, each way, per old car for repairs. By routing shipments via the Elgin, Joliet & Eastern, shippers over the petitioner's tracks secure the Chicago rates to and from interstate points reached by railroads which do not themselves absorb petitioner's charges. All connecting trunk lines are required by the state commission to absorb its charges on intrastate traffic.

For movements between the different plants on its line the petitioner charges $4 per loaded car. It is testified that it also does intraplant switching for the car company, and occasionally for the Ryan Car Company, at $2.50 per loaded and 50 cents per empty car. It considers that these charges are sufficient, particularly as new or repaired cars are handled for the car company 11 at a time. The car company effects some of its intramill movements by means of a windlass and a transfer table. In connection with this intraplant switching, reference was made to similar services performed in the Chicago switching district by the Pennsylvania Company for the General Chemical Company, by the Ann Arbor Belt Railroad for the Grasselli Chemical Company, and by the Indiana Harbor Belt for the Illinois Car & Equipment Company.

The increases in rates authorized by the Director General in General Order No. 28 were not shared by petitioner. Three committees appointed by the Railroad Administration to examine the situation at Chicago have approved a 25 per cent increase in the amount of the absorptions, but no action has been taken pending a determination by us of petitioner's status.

The petitioner contends that the present switching absorptions do not cover the cost of service. Operations for 1917 and 1918 resulted in deficits. According to an exhibit filed by it, the cost of performing the switching service during 1918 averaged $4.11 per car for interchange and $2.78 per car for interplant and intraplant work. The cost per ton is given as 13.92 cents in each instance. While the

separation between interchange and other service purports to be on an engine-hour basis, it appears to have been made on a tonnage basis, allowing 38 tons for each loaded car in interchange service and 20 tons per car for all other cars, whether loaded, new, or repaired. Without further analysis here it is sufficient to state that the record does not afford an adequate basis for a determination of the maximum amount which may properly be paid to the petitioner out of the Chicago rates.

Upon the record we find that the petitioner is a common carrier and may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation, whether in the form of divisions of through rates or of switching absorptions, must not be more than is reasonable; and a specific and complete statement of the basis agreed upon must be filed with this Commission immediately upon its adoption.

No order is necessary.

No. 9975.

ABRAHAM D. RADINSKY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 14, 1919. Decided September 26, 1919.

Charges legally applicable on a mixed carload of rags and scrap rubber from Denver, Colo, to Chicago, Ill., and on certain mixed carloads of junk and scrap metals, including scrap copper, brass, and aluminum, from Denver, Colo., and Cheyenne, Wyo., to Chicago, Ill., and from Loveland, Colo., to St. Louis, Mo., found to have been unreasonable. Reparation awarded.

Carle Whitehead and *Albert L. Vogl* for complainant.

Wallace T. Hughes and *F. J. Schubert* for Chicago, Rock Island & Pacific Railway Company, and Chicago, Burlington & Quincy Railroad Company; *C. Frankenberger* for Union Pacific Railroad Company; *A. S. Brooks* for Colorado & Southern Railway Company; and *Fred Wild, jr.*, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is engaged in the junk business at Denver, Colo., under the trade name of the Continental Junk House. By complaint filed November 19, 1917, he alleges that the rates charged by the defendant carriers on eight mixed carloads of scrap metals and junk shipped from Denver and Cheyenne, Wyo., to Chicago, Ill., and from Loveland, Colo., to St. Louis, Mo., between November 22, 1915, and June 28, 1917, inclusive, were unreasonable. Reparation and the establishment of reasonable rates are asked. By supplemental complaint the Director General of Railroads was made a party defendant. He answered and further hearing was had on the issue raised by complainant's demand for future rates. Rates are stated in amounts per 100 pounds.

The shipments, all of which originated in Colorado common-point territory, moved over the defendant carriers' lines. One shipment, which moved in a 50-foot car November 22, 1915, from Denver to Chicago, was a mixed carload of rags and scrap rubber. It weighed 35,900 pounds, and charges were collected in the sum of $241.20 at

the commodity rate of 67 cents, minimum 36,000 pounds, applicable to a mixture with scrap copper, brass, and certain other scrap metals not including aluminum, of rags and certain articles carried in the western classification under the descriptive heading of junk, including scrap rubber, lead and zinc, and old rope. The rate legally applicable was the class B rate of 63 cents, minimum 42,600 pounds, for cars 50 feet in length, applicable under the governing western classification to a mixture of scrap rubber and other articles of junk with rags and other articles, including scrap copper and brass when not exceeding 33⅓ per cent of the total weight of the mixed carload. The shipment was undercharged $27.18. Another shipment, which moved February 16, 1916, from Denver to Chicago, contained a mixture of rags, scrap zinc, old scrap rubber, copper, and brass weighing 35,363 pounds, on which charges were collected in the sum of $222.79 at the class B rate of 63 cents. This shipment also moved in a 50-foot car and under rule 6–B of the western classification the minimum applicable in connection with the class B rate was 42,600 pounds. The legally applicable rate was the commodity rate of 67 cents, minimum 36,000 pounds, and the shipment was undercharged $18.41. This shipment also included 338 pounds of scrap aluminum on which charges were collected at the first-class less-than-carload rate of $1.80 applicable on "aluminum and aluminum articles, scrap, in bags." The remaining shipments, four from Denver to Chicago, one from Cheyenne to Chicago, and one from Loveland to St. Louis, consisted of various articles of junk, including rags, old rope, scrap rubber, lead, and zinc in mixed carloads with scrap copper and brass. Three of these shipments also contained a small quantity of scrap aluminum. Charges were collected at the applicable commodity rates of 67 cents from Denver and Cheyenne to Chicago and 63 cents from Loveland to St. Louis, except that on the aluminum the first-class rates legally applicable were charged.

For some years prior to February 14, 1913, the carload commodity rates on junk as described in the western classification, including all of the articles in question except aluminum, were 52.5 cents from Colorado common points to Chicago, and 47.5 cents to the Mississippi River. On that date the description in the western classification of junk taking the commodity rates was changed. Rags and scrap copper and brass were eliminated, rendering applicable thereon higher class rates and a rule was provided in the classification that carload mixtures of those articles with articles specified as junk should take the highest rate and minimum applicable to any commodity in the car. On October 1, 1913, rags were restored to the list of articles specified in the commodity tariff as constituting junk, on which the 52.5-cent and 47.5-cent rates were still applicable. On

the same date the commodity rates of 67 cents to Chicago and 63 cents to St. Louis charged on the mixtures of junk and scrap copper and brass contained in certain of the shipments, were established. On March 1, 1915, the commodity rates on junk were canceled, the western classification then in effect providing for the application of the class B rates on carload mixtures of various articles of junk with rags and scrap copper and brass, the weight of the scrap metals not to exceed 33⅓ per cent of the total weight of the mixed carload. In *Radinsky* v. *C., R. I. & P. Ry. Co.*, Docket No. 7158, unreported, we prescribed rates from Denver to Chicago of 60 cents on mixed carloads of scrap copper, brass, and rags, and 52.5 cents on mixed carloads of scrap rubber and rags. Following our decision in that case defendants made the rate from Loveland to St. Louis on such mixtures 56 cents and 45.5 cents, respectively. These rates became effective December 15, 1915. Pursuant to General Order No. 28 of the Director General, they were increased on June 25, 1918, to 75 cents and 65.5 cents, respectively, on traffic from Denver and Cheyenne to Chicago, and to 70 cents and 57 cents, respectively, on traffic from Loveland to St. Louis. Since September 1, 1916, the western classification has included scrap aluminum in the list of articles which may be shipped in mixed carloads with articles of junk at the class B rates, and on June 15, 1918, it was also added to the list of articles taking the commodity rate of 67 cents.

Complainant contends that the charges legally applicable were unreasonable to the extent that they exceeded those that would have accrued at rates of 52.5 cents to Chicago on mixed carloads of rags and scrap rubber and 60 and 56 cents to Chicago and St. Louis, respectively, on mixed carloads of junk and scrap metals, including scrap copper, brass, and aluminum.

Defendants made no attempt to justify the rates applicable on the shipments, which rates represented increases since January 1, 1910, but expressed willingness to make reparation on the basis of rates of 63 cents to Chicago and 56 cents to St. Louis on mixed carloads of scrap copper, brass, aluminum, and articles of junk.

At the final hearing in this case defendants filed a proposed tariff item providing for mixtures of various articles of junk with scrap copper, brass, aluminum, and other scrap metals, which complainant admitted was satisfactory to him. This item, which became effective April 25, 1919, is as follows:

Scrap aluminum, scrap brass, scrap copper, scrap babbitt metal, scrap tin, scrap tin foil, minimum weight 36,000 pounds.

NOTE.—Bones, pig iron drippings, broken glass, hoofs, horns, horn pith, scrap iron (in pieces having value for remelting purposes only), scrap lead, old rope, scrap rubber (including worn out rubber tires), rags, scrap or waste paper, scrap bronze, scrap electrotype, pewter, stereotype or tin, scrap fiberboard, pulpboard, or strawboard, and scrap zinc may be loaded in carloads with the articles described above at the rates named in this item.

The item names a rate of 75 cents from Denver and Cheyenne to Chicago and a rate of 66.5 cents from Loveland to St. Louis.

Following the case cited and upon the facts of record we find that the charges legally applicable were unreasonable to the extent that they exceeded those that would have accrued at rates of 52.5 cents per 100 pounds, minimum 30,000 pounds, to Chicago on mixed carloads of rags and scrap rubber, and 60 cents and 56 cents per 100 pounds, minimum 36,000 pounds, to Chicago and St. Louis, respectively, on mixed carloads of junk and scrap metals, including copper, brass, and aluminum. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that he is entitled to reparation, with interest, as follows:

	Amount.
Chicago, Burlington & Quincy Railroad Company	$25.46
Colorado & Southern Railway Company and Chicago, Burlington & Quincy Railroad Company	46.35
Chicago, Rock Island & Pacific Railway Company and Illinois Central Railroad Company	52.72
Chicago, Rock Island & Pacific Railway Company	38.07
Union Pacific Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Chicago & Alton Railroad Company	25.31
Union Pacific Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Chicago, Milwaukee & St. Paul Railway Company	62.50
Colorado & Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, St. Louis Merchants Bridge Terminal Railway Company, and St. Louis Southwestern Railway Company	28.10

As rates satisfactory to complainant have been established, no order for the future is deemed necessary.

An order awarding reparation will be entered.

No. 9124.

A. D. RADINSKY ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 14, 1919. Decided September 26, 1919.

Rates on scrap copper, brass, rags, and junk, in mixed carloads, from Trinidad, Pueblo, and Denver, Colo., to Chicago, Ill., found to have been unreasonable. Reparation awarded.

Albert L. Vogl for complainants.

A. S. Brooks for Colorado & Southern Railway Company; *F. J. Schubert* for Chicago, Rock Island & Pacific Railway Company; and *Fred Wild, jr.*, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainants are A. D. Radinsky, trading under the name of the Continental Junk House at Denver, Colo.; the Denver Metal Company, a corporation located at Denver; and Samuel Bernstein, of Pueblo, Colo.; all junk dealers. By complaint seasonably filed they allege that unreasonable rates were charged by the defendants on 14 carloads of junk, rags, and scrap metals shipped from Denver, Trinidad, and Pueblo, Colo., to Chicago, Ill., between October 15, 1913, and January 5, 1916. Reparation and the establishment of reasonable rates are asked. By supplemental complaint the Director General of Railroads was made a party defendant. He answered and further hearing was had on the issue raised by complainants' demand for future rates. Rates are stated in amounts per 100 pounds.

The shipments, all of which originated in Colorado common-point territory, moved over the defendants' lines. One, which moved September 7, 1915, from Denver to Burr Oak, Ill., a point within the Chicago switching district, contained rags weighing 36,400 pounds, on which charges were collected in the sum of $196.56 at the applicable class C rate of 54 cents. Another, moving August 13, 1915, from Denver to Chicago, was billed as junk. It weighed 34,900 pounds and charges were collected thereon in the sum of $241.20 at the commodity rate of 67 cents, minimum 36,000 pounds, applicable

on scrap brass, scrap copper, scrap tin, scrap babbitt metal, and scrap tin foil. Under a note to the item carrying this rate in the tariff, bones, pig-iron drippings, broken glass, hoofs, horns and horn pith, scrap iron, scrap lead, old rope, old rubber (including worn-out rubber tires), rags and scrap zinc could be loaded in mixed carloads with the articles described at the rates named in the item. A statement filed subsequent to the hearing shows that this shipment contained articles enumerated in the note, also a sack of scrap aluminum, not covered by the item, but none of the articles shipped was listed in the item proper. The articles enumerated in the note are also carried in the western classification under the heading of junk and are rated, in mixed carloads, class B, minimum 30,000 pounds, subject to rule 6–B. As the shipment was loaded in a 50-foot car, it was subject, under rule 6–B, to a minimum of 42,600 pounds, to which the class B rate of 63 cents was legally applicable, except that on the sack of aluminum, which weighed 106 pounds, charges should have been assessed at the less-than-carload first-class rate of $1.80, applicable on "aluminum and aluminum articles, scrap, in bags." The shipment was undercharged $29.09.

Of the remaining 12 carloads, 9 of which were shipped by complainant Radinsky, 10 originated at Denver, 1 at Pueblo, and 1 at Trinidad, the destination in each instance being Chicago. They consisted of scrap copper and brass mixed with junk, rags, and rubber. Charges were collected at the commodity rate of 67 cents, except that on 1,702 pounds of scrap aluminum and 89 pounds of scrap German silver in C. & N. W. car No. 125778 the legally applicable less-than-carload first-class and one and one-half times first-class rates of $1.80 and $2.70, respectively, were charged, while on 290 pounds of scrap aluminum, included in S. P. car No. 61991, the charges appear to have been assessed at a rate of $1.85, resulting in an overcharge of 5 cents per 100 pounds, or 15 cents. If the mixed shipment of junk, scrap copper, and brass contained in C., R. I. & P. car No. 62579 did not contain more than 33⅓ per cent scrap copper and brass, it could have moved, under the alternative application of the governing tariff, at the class B rate of 63 cents. If the latter rate applied, the shipment was overcharged $15.20.

The rates assailed represent increases since January 1, 1910. Defendants made no attempt to justify the rates, but expressed willingness to make reparation on the shipments containing scrap copper and brass upon the basis of the 60-cent rate claimed, and on the shipment consisting entirely of rags upon the basis of the 52.5-cent rate.

A detailed history of the rates on junk and scrap metals from and to the points in question will be found in *Radinsky* v. *C., B. & Q.*

R. R. Co., 55 I. C. C., 199, decided contemporaneously herewith. In that case we found that rates of 52.5 cents per 100 pounds, minimum 30,000 pounds, on mixed carloads of rags and scrap rubber, and 60 cents per 100 pounds, minimum 36,000 pounds, on mixed carloads of junk and scrap metals, including copper, brass, and aluminum, would have been reasonable maximum rates on certain shipments which moved from points in Colorado common-point territory to Chicago between November, 1915, and June, 1917.

Following the case cited and upon this record we find that the charges legally applicable on the shipments containing scrap copper and brass, including the ones containing aluminum but excluding the 89 pounds of German silver, were unreasonable to the extent that they exceeded those that would have accrued at a rate of 60 cents per 100 pounds, minimum 36,000 pounds, and that the charges collected on the shipment of rags and those legally applicable on the shipment of junk of August 13, 1915, except the sack of aluminum, were unreasonable to the extent that they exceeded 52.5 cents per 100 pounds, minimum 30,000 pounds. We further find that A. D. Radinsky made nine of the shipments containing scrap copper and brass, the straight carload shipment of rags, and the carload shipment of junk and aluminum above described, and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that he is entitled to reparation, with interest, as follows:

Chicago, Burlington & Quincy Railroad Company	$76.29
Chicago, Burlington & Quincy Railroad Company and Illinois Central Railroad Company	53.06
Chicago, Burlington & Quincy Railroad Company and Chicago & Alton Railroad Company	25.44
Chicago, Rock Island & Pacific Railway Company and Jacob M. Dickinson, receiver	32.06
Chicago, Rock Island & Pacific Railway Company and Jacob M. Dickinson, receiver, and Illinois Central Railroad Company	81.82
Chicago, Rock Island & Pacific Railway Company and Jacob M. Dickinson, receiver, and Chicago & North Western Railway Company	54.27

The above includes the overcharges mentioned. Collection of the undercharge may be waived. No one having personal knowledge as to the payment of charges or other details in connection with the shipments made by the other complainants appeared at the hearing, and, therefore, no reparation can be awarded on those shipments.

As rates satisfactory to complainants have been published, no order for the future is deemed necessary. An order awarding reparation will be entered.

No. 9425.[1]

UNITED SHOE MACHINERY COMPANY

v.

BOSTON & MAINE RAILROAD ET AL.

Submitted April 5, 1919. Decided October 7, 1919.

Former finding that the ferry-car charges assessed on complainant's shipments so loaded as to entail back hauling were not unreasonable or otherwise unlawful affirmed upon rehearing. Original reports in 42 I. C. C., 435 and 51 I. C. C., 28.

Walter B. Farr for complainant.

W. A. Cole for defendant.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Separate reports were issued in these cases originally, 42 I. C. C., 435, and 51 I. C. C., 28. In No. 9425 the ferry-car charge of $2 per car assessed by the Boston & Maine Railroad, hereinafter referred to as defendant, for the transportation of numerous less-than-carload shipments from complainant's plant at Beverly, Mass., to defendant's transfer station at Salem, Mass., for assorting and forwarding to interstate points which involved a back haul through Beverly, was attacked as unreasonable. In No. 8685 the same charge was attacked as unreasonable for like service from the plant of the complainant therein at North Leominster, Mass., to defendant's transfer station at Ayer, Mass. In both cases we found that the charges complained of were not shown to have been unreasonable or otherwise in violation of the act. Upon petition of complainant in No. 9425 that case was reopened on January 6, 1919, and as the same tariff rule was involved in No. 8685 that case also was reopened on the same date. Further hearings have been had accordingly. The applicable tariff rule, together with the amendment thereto which has eliminated the ferry-car charge at Beverly, is quoted in the original report in No. 9425.

Beverly is about 3 miles north of Salem. It appears that as a matter of operating convenience complainant's ferry cars when

[1] This report embraces No. 8685, Merriam, Hall & Company *v.* Boston & Maine Railroad.

loaded exclusively with shipments destined to points east of Newburyport, Mass., are hauled to Salem and there attached to eastbound freight trains. Cars loaded exclusively with shipments to Newburyport and points west thereof are picked up by eastbound extra freight trains at Beverly. In neither case is a transfer service necessary and the rule in question is not applicable. Cars containing shipments for points both east and west of Beverly are taken to the transfer station at Salem, where the shipments are assorted and placed in proper cars for forwarding. When congestion at the Salem transfer station necessitates, the station at Beverly is so used, but is not considered a regular transfer station, nor would a ferry car originating at Beverly "pass through" that point, within the meaning of the tariff rule. The movement of ferry cars from complainant's siding to Salem is made by switching engines from the Salem yard. While from an operating standpoint Beverly is treated as within the Salem yard, the two points are separate stations in the tariffs, with rates to each; and on local shipments between them a line-haul, not a switching, charge would be assessed. As the rule stood during the period in question, the ferry-car charge was legally collectible on cars so loaded as to entail a back haul through Beverly.

It is true that the tariff did not and does not now designate the transfer stations to which shipments should be sent from the various points of origin covered by the tariff, nor contain a list of the transfer stations, except those in the state of New York. It may well be conceived that cases might arise where the failure of the tariff to show the transfer stations would mislead and confuse shippers to their prejudice, and the defendant will be expected to correct the deficiency. But such a condition is not shown to have existed in this case. The evidence adduced clearly shows that complainant's trouble did not so arise. Its witness testified that in loading the cars "the provision of the tariff was not taken into consideration at all." Relying upon advice of an official of the defendant that no charge would be made against its shipments, complainant loaded both eastbound and westbound shipments into the same cars and tendered them to the carrier for hauling to Salem transfer, making a back haul of part of the shipments obviously unavoidable. A similar result would have attended a movement of the cars to a transfer station east of Beverly. In fact, even after complainant had been specifically advised that a ferry-car charge would be assessed unless its shipments were so segregated as to avoid back hauls it made no change in its loading practice.

It was admitted at the rehearing that the real purpose of the attack upon the tariff was to secure the elimination of the back-haul provision so far as it applied to Beverly, and that even had the trans-

fer stations been shown in the tariff it would still have been contended that the ferry-car rule was unreasonable in that it did not afford complainant the same privileges as shippers within the Salem district. The applicable tariff rule plainly and specifically places upon shippers the obligation of so loading their shipments as to avoid back hauling if they would escape the imposition of the ferry-car charge; and complainant must have known when it loaded eastbound and westbound shipments indiscriminately in the same car that some of the shipments would have to be back hauled through the loading point. As stated in our original report, the fact that complainant was misinformed by a representative of defendant as to the application of the tariff affords no ground upon which the Commission can award reparation.

Certain of the charges assessed cover cars which contained shipments destined to points east of Beverly only, which were handled through Salem for the convenience of defendant, while others cover cars transferred at Beverly. Defendant admits that no ferry-car charges should have been collected on these shipments, and will be expected to make the necessary adjustments. As before stated, by appropriate amendment the charge is not now imposed on shipments back hauled from the Salem transfer through Beverly.

The complainant in No. 8685 does not contend that it was misled by the tariff. Its case is predicated entirely upon the fact that it was misinformed by defendant's local agent as to how its shipments should be handled; and it also so indiscriminately loaded its shipments as to necessitate a back haul from a transfer station either east or west of North Leominster. This practice it has since corrected, upon the advice of a representative of defendant. The erroneous information from the agent affords no ground upon which this Commission can order refund of the charges complained of.

Upon review of the entire records and reconsideration of all the facts and circumstances, we adhere to our previous conclusions and find that the complainants have not shown that the charges collected were unreasonable or otherwise in violation of the act.

An order dismissing the complaints will be entered.

No. 10329.

ROPE PAPER SACK BUREAU
v.
DIRECTOR GENERAL ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

Submitted May 21, 1919. Decided September 30, 1919.

Rules and regulations of the southern classification, in effect prohibiting the transportation of flour and meal in rope-paper sacks, found to be unreasonable and unduly prejudicial. Defendants required to provide for the use of such containers under reasonable restrictions.

Louis C. Southard for complainant.
Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

By complaint filed November 7, 1918, complainant, a voluntary association of manufacturers of rope-paper sacks, alleges that the rules and regulations of the southern classification prohibiting the transportation of flour and other grain products in rope-paper sacks are unreasonable and unjustly discriminatory, and asks that the defendants be required to establish rates and ratings to provide for such transportation.

Paper is made from vegetable fibers reduced to cellulose, a substance resembling cotton. The fiber may be obtained from jute, flax, hemp, wood, sisal, cotton, or the manila plant. Rope paper is made from old manila rope, with a small percentage of old burlap bagging and wood pulp. Although made from waste materials, the sacks are clean and sanitary. The manila fiber is longer in proportion to its thickness than most fibers. Its interweaving quality makes a paper which retains its strength after the folding required to make a sack. Another material, known as Kraft paper, which is used extensively in the manufacture of paper sacks, is made from wood pulp. Rope-paper flour sacks have been manufactured and used for general purposes for more than 60 years. During the year 1918 the eight manufacturers comprising the complainant association sold 119,055,000 sacks to millers in the United States. Of this number approximately 1.25 per cent were shipped to southern, 7.5 per cent to

western, and 91.25 to official classification territories. Taking the country as a whole, more cloth than paper sacks are used. The price of flour in cotton sacks is higher than flour in paper sacks, the differences in price being fixed by the Food Administration at 25 cents, 40 cents, and 55 cents per barrel, for ¼-barrel, ⅛-barrel, and 1/16-barrel sacks, respectively. The great majority of packages for family use are in ⅛-barrel sizes, weighing 24 or 24.5 pounds.

The strength of paper flour sacks is tested in several ways. The tests show the strength of paper after it has been folded a number of times, the pull lengthwise and crosswise of the grain which the paper will stand, the pressure per square inch which will burst the sack, and the number of times a sack containing a given commodity can be dropped without bursting. The latter test shows that flour exerts less strain on a bag than coarser commodities, such as sand or granulated sugar. The specifications below are quoted from proposed Consolidated Classification No. 1. Those for containers of grain products are proposed to apply only in official and western territories. The container bags referred to are designed to carry one or more smaller bags.

Specifications for use of paper bags as outer containers.

Commodity and size of bag.	Rope-stock paper.			Kraft (100 per cent sulphate pulp).	
	Manila-rope fiber, not less than—	Weight of paper per 500 sheets, 24 by 36 inches, not less than—	Mullen test resistance per square inch, not less than—	Weight of paper per 500 sheets, 24 by 36 inches, not less than—	Mullen test resistance per square inch, not less than—
Grain products:	*Per cent.*	*Pounds.*	*Pounds.*	*Pounds.*	*Pounds.*
¼ bbl	75	70	63	88	79
½ bbl	75	80	72	100	90
¾ bbl	75	90	81	113	102
Container bags not exceeding 21 by 36 inches	75	100	90	125	113
Lime, contents not to exceed—					
50 lbs	35	95	67	90	84
80 lbs	60	95	76	110	94
100 lbs	75	100	100	125	113
Plaster, contents not to exceed—					
80 lbs	60	95	76	110	94
100 lbs	75	100	100	125	113

The southern classification, which carries any-quantity ratings on grain products, has never specifically authorized the transportation of flour in paper bags. Prior to November 1, 1912, it contained a general rule providing that containers must be reasonably safe and practicable, and that single bags must be made of cloth, unless otherwise provided in the separate description of articles. Under this rule shipments in paper were refused. Since that date this classification has provided that bags must be of cloth, carry contents safely,

and prevent sifting. From 1902 until March 20, 1909, meal could move in paper at ratings substantially higher than when in cotton, but on the latter date this movement was prohibited. Both the official and western classifications authorize the use of paper containers for shipments of flour and meal. With the exception of the less-than-carload rating in the west, the ratings in these two classifications on flour and meal in paper and in cotton are the same. Complainant maintains that the paper sack is a reasonably safe container; that it is practically as safe as the cotton sack; and that defendants should accept grain products in rope-paper bags.

Complainant's witnesses testify that a cloth bag will cling to a nail and produce a tear, where a paper sack will merely be punctured; that cotton bags may be weakened by moths or by previous use before being filled; that there is less friction against the floor and sides of a car when flour is in paper than when in cloth; that paper sacks can be repaired with tape more easily than cloth can be sewed; that paper sacks will keep flour dry when immersed in water for a short time, but that a small amount of water will penetrate a cloth bag; that the cotton sack, being porous, will absorb odors, dirt, and other impurities which a paper bag will not; that flour in paper can be loaded to the top of the car with practically no damage if the sheathing of the car is high enough; and that flour in paper has been stacked 20 feet high in warehouses without bursting the bottom rows. While the southern classification provides that cloth bags must prevent sifting, it is pointed out that enough flour passes through cloth to leave a white mark on everything with which it comes in contact. It was testified that the paper container prevents sifting entirely, but that 3.5 ounces are allowed for sifting on a 48.5-pound cloth sack.

It is further testified that shipments of flour in paper sacks move from Minneapolis to the Atlantic seaboard via rail, lake, and rail, and are handled six times en route without excessive loss or damage; and that flour in paper sacks is sometimes received in carloads at distributing points, shipped to customers in less than carloads, returned for some reason, and then shipped again without complaint of damage. Photographs were submitted showing paper sacks in good condition taken from cars which had been overturned and severely damaged. Complainant submitted a statement of shipments made from Minneapolis, Minn., in January, February, and March, 1908, showing proportionately heavier claims on flour in cotton bags than in paper sacks.

Complainant filed numerous letters from firms familiar with the paper container who desired to use it on shipments moving in the south. Millers located in Virginia, North and South Carolina, and

other southern states use large quantities of paper sacks in the distribution of flour locally and by trucks where it is not required to be shipped by rail. A witness for one of the rope-paper-bag manufacturers, who had formerly been in the flour business in New York, testified that from 75 to 80 per cent of his sales of flour in bags had been handled in paper. The testimony of others is that in New England practically no flour is sold in cotton bags containing less than 98 pounds; and one firm had not received a full carload of flour in cloth in 20 years.

Complainant cites the fact that carload and less-than-carload shipments in paper sacks are accepted throughout western and official classification territories, and that in southern territory the following commodities move in paper containers in carload quantities: Cement, lime, plaster, charcoal, coke, zinc oxide, clay, sand, and plaster of paris. Cement, lime, and plaster are accepted in 100-pound bags, while the largest paper flour sack is not required to carry more than 48.5 pounds. Defendants admit that the claims filed on cement, lime, and plaster are negligible and that these commodities have moved in paper containers in carloads for many years.

Defendants insist that the paper flour sack is not reasonably safe; that the use of paper is an exception to the general rule concerning package requirements proposed for application in all territories, namely, that bags shall be made of cloth unless otherwise specified; that the use of paper should be restricted rather than extended; and that at different times the elimination of the use of paper containers in western and official classification territories has been considered. Defendants submitted in evidence a number of paper flour sacks, apparently in commercial use, as having failed to come up to the specifications above quoted; and it is testified, on the other hand, that specifications will be adopted in all territories which will bring about the use of better and stronger cotton bags. Defendants pointed out that a cloth sack will not burst like paper when water soaked or when dropped; that when damaged by pure water flour in cloth may be dried out and used; that when partially torn cotton will not tear further as easily as paper; and that in order to prevent the absorption of odors clean cars are furnished for flour shipments, although occasionally a car which is apparently clean will give off an odor when heated by the sun.

Defendants represent that what little experience they have had with shipments in paper has been unfavorable. They stressed the heavy loss-and-damage claims shown by complainant's exhibits prior to and during the period of heavy loading when flour was loaded higher than the sheathing in the car. Letters from other carriers familiar with the handling of flour in paper were submitted, and

statistics prepared by lines operating in the Buffalo, N. Y., district. These exhibits indicate that the percentage of claims increases according to the order in which the following containers are named: Barrels, jute sacks, cotton sacks, and paper.

Defendants further contend that there is no demand for the use of paper bags in the south, and that the few applications received therefrom were confined to carload shipments. They point out that this complaint was filed by manufacturers of paper bags, and not by shippers of grain products; but some of the complainant's witnesses were shippers and receivers of flour. Letters from numerous jobbers and a few millers in the south, protesting against the establishment of ratings on flour in paper containers, were filed in the record, a small percentage of the writers having had an opportunity to test the merits of the paper bag. It is testified that in official classification territory the movement to distributing points is in carloads and that the less-than-carload hauls from distributing points and local mills to the consumer are comparatively short, while the hauls in the south are long and cars are loaded to break bulk at several points. Defendants also point out that the western classification names a higher rating on less-than-carload shipments in paper than in cotton. The carload ratings, however, are the same, and this is true of both carload and less-than-carload ratings in official classification.

Defendants stress the fact that the only commodities accepted in paper containers in the south are also accepted in bulk in carloads; that, in anticipation of injury to the paper containers, extra bags are put in the cars to replace any that may become damaged; that these commodities do not compete with flour; and that none of the commodities referred to are accepted in paper containers in less than carloads. They observe that where shipments are accepted in bulk the container authorized is without significance.

It should be observed that while such commodities as lime and cement ordinarily move in carloads rather than in less than carloads, the less-than-carload movement of flour is very important and strongly competitive with the carload movement. *Stuart's Draft Milling Co.* v. *S. Ry. Co.*, 31 I. C. C., 623; *Official Classification Ratings*, 37 I. C. C., 166, 186. It is not disputed that loss-and-damage claims accrue on shipments in paper bags, but it is evident that cloth and paper bags have individual advantages; and the determinative question is whether the rope-paper sack or bag is a suitable container when handled with reasonable care. We find that the rules, regulations, and ratings of the southern classification are unreasonable and unduly prejudicial in so far as they in effect prohibit the transportation of flour and meal, in any quantity, in rope-paper sacks and in

rope-paper container bags, which conform to the specifications hereinbefore shown, not exceeding one-quarter barrel in amount per sack or bag. Whether or not other grain products should be accepted in paper is not established by the present record. The question of what ratings should apply on shipments in these containers is not fairly within the issue and no finding is made thereon.

An appropriate order will be entered.

No. 10337.

HEBE COMPANY

v.

DIRECTOR GENERAL, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ET AL.

FOURTH SECTION APPLICATION No. 10998.

Submitted February 18, 1919. Decided September 25, 1919.

Rate of 82 cents per 100 pounds charged for the transportation of evaporated skimmed milk containing vegetable fat, in carloads, from Jefferson and Oconomowoc, Wis., to De Ridder, La., found to have been unreasonable to the extent that it exceeded 61 cents per 100 pounds. Reasonable relationship of rates prescribed for the future and reparation awarded.

E. S. DePass for complainant.

Robert H. Widdicombe for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation, engaged in the manufacture of evaporated skimmed milk containing vegetable fat, at Jefferson and Oconomowoc, Wis., alleges by complaint seasonably filed that the rate charged by defendants on three carloads of this commodity, shipped October 12 and November 9, 1916, and January 31, 1917, from those points to De Ridder, La., was, and that the present rate is, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth sec-

tion of the act. Reparation and a reasonable and nonprejudicial rate for the future are asked. Rates are stated in cents per 100 pounds.

Two shipments originated at Jefferson, a local station on the Chicago & North Western Railway, 52 miles west of Milwaukee, Wis., and moved in connection with the Chicago, Milwaukee & St. Paul Railway to Kansas City, Mo., and the Kansas City Southern Railway and Texarkana & Fort Smith Railway beyond. One originated at Oconomowoc, a local station on the Chicago, Milwaukee & St. Paul Railway, 33 miles west of Milwaukee, and moved over the line of that defendant to Kansas City and the Kansas City Southern Railway and Texarkana & Fort Smith Railway beyond. They weighed in the aggregate 112,787 pounds and charges were collected in the sum of $926.84 at the fifth-class rate of 82 cents. The shipment of January 31 was overcharged $2. The western classification then provided and now provides a fifth-class rating on condensed milk, in carloads, but prior to January 25, 1917, provided no specific rating applicable to this commodity. Effective on that date the descriptive item was broadened to include condensed or evaporated milk containing vegetable fat. The rate assessed was properly applied to the shipment forwarded subsequently to that date, but the tariffs named no rate that was specifically applicable to the shipments which moved prior thereto. The present fifth-class rate applicable on this commodity from and to the points in question is 93 cents.

At the time the shipments moved defendants maintained on condensed milk a commodity rate of 53 cents from Jefferson and Oconomowoc to Lake Charles, La., 53 miles south of De Ridder on the Kansas City Southern, to which point De Ridder is intermediate over the route of movement, and on November 22, 1916, established a rate of 45 cents on like traffic from Richland Center, Madison, Janesville, and Watertown, Wis., competitive points in the same general vicinity, to Lake Charles. The points of origin here are also intermediate Watertown to Lake Charles over the route of movement. On May 30, 1917, these rates on condensed milk were made applicable to evaporated milk containing vegetable fat from and to the same points, and on June 25, 1918, were increased to 66.5 cents and 56.5 cents, respectively, under General Order No. 28 of the Director General of Railroads. Complainant is in error in its contention that the Lake Charles combination to De Ridder, during the period of movement, was lower than the 82-cent rate charged, as it was based on the use of the 45-cent rate to Lake Charles from the contiguous Wisconsin producing points but not applicable from Jefferson or Oconomowoc.

Complainant contends that the charges collected on these shipments were unreasonable to the extent that they exceeded those that would have accrued at the 45-cent rate on condensed milk from the neighboring Wisconsin points and that for the future the rates from and to the points in question should not exceed the rates from the other Wisconsin points mentioned to Lake Charles, namely, 56.5 cents. As further showing that the charges assailed were unreasonable comparison is made with a rate of 61 cents applicable on condensed milk when the shipments moved and shortly thereafter made applicable on condensed or evaporated milk containing vegetable fat, and since increased to 76.5 cents, from the Wisconsin points named to Beaumont, Tex., 78 miles southwest of De Ridder.

For defendants it was testified that the combination of the water-compelled rates to New Orleans and rates from New Orleans to Lake Charles, a distance of 218 miles, established years ago in competition with schooners plying between these points resulted in low rates from St. Louis, Milwaukee, and defined territories, including points in Wisconsin, to Lake Charles. They state that the customary basis for commodity rates to De Ridder is the Texas common-point basis, De Ridder being only 16 miles east of the Texas-Louisiana state line, and the Texas common-point rate being maintained at points just west of that line on the Gulf, Colorado & Santa Fe Railroad, which extends westwardly through De Ridder into Texas. They propose to establish on this traffic from St. Louis and defined territories, including Wisconsin producing points, to De Ridder and Lake Charles the Texas common-point basis, which will result in a rate of 76.5 cents from and to the points concerned, and express a willingness to pay reparation on the shipments in question on the basis of the former Texas common-point rate of 61 cents.

We find that the rate charged was unreasonable to the extent that it exceeded 61 cents per 100 pounds, and that the present rate assailed is, and for the future will be, unreasonable to the extent that it exceeds or may exceed the rate contemporaneously maintained on like traffic from Milwaukee to Texas common points. Complainant has not shown that it has been damaged by reason of alleged unjust discrimination on account of the lower rates to Lake Charles.

We further find that complainant made the shipments as described, and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation from the Chicago & North Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Kansas City Southern Railway Company, and the Texarkana & Fort Smith Railway Company in the sum of $160.88,

with interest, and from the Chicago, Milwaukee & St. Paul Railway Company, Kansas City Southern Railway Company, and Texarkana & Fort Smith Railway Company in the sum of $77.96, with interest.

In March, 1917, by Fourth Section Order No. 6518 we authorized defendants to establish from and to the points in question the same rates on condensed or evaporated milk containing vegetable fat as were contemporaneously in effect on condensed milk or evaporated milk, without observing the long-and-short-haul provision of the act to regulate commerce, pending our action on their application for relief from the provisions of the fourth section respecting rates on condensed or evaporated milk from and to the same points. Defendants were called upon to justify the fourth section departures with respect to the commodity involved, but stated at the hearing that they did not desire fourth section relief for the future with respect to evaporated skimmed milk containing vegetable fat. An order will be entered vacating that portion of our order granting fourth section relief so far as it concerns this traffic.

Appropriate orders will be entered.

No. 10356.

UNITED PAPERBOARD COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, ERIE RAILROAD COMPANY, ET AL.

Submitted February 13, 191[illegible]. Decided September 25, 1919.

Rate of 16 cents per 100 pounds on chip board, in carloads, from Lockport, N. Y., to Camden, N. J., found to have been unreasonable to the extent that it exceeded 12.6 cents. Reparation awarded.

R. L. Stover for complainant.

A. H. Elder for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant is a corporation engaged in manufacturing box board and similar products at New York, N. Y. By complaint filed December 5, 1918, it alleges that the rate charged by the defendant carriers on one carload and one "follow lot" of chip board, shipped September 12, 1917, from Lockport, N. Y., to Camden, N. J., was unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, aggregating 63,720 pounds, was consigned to Kaighn's Point, Camden, a local station on the Atlantic City Railroad, and moved over the Erie Railroad, New York Central Railroad, Philadelphia & Reading Railway, hereinafter called the Reading, and Atlantic City Railroad, which is a part of the Reading system. The New York Central was not made a party defendant. Charges were collected in the sum of $101.95, at the joint sixth-class rate of 16 cents, applicable under exceptions to the official classification. There was contemporaneously in effect a commodity rate of 12.6 cents on box board, strawboard, and wood-pulp board, applicable in connection with the Pennsylvania Railroad, but not with the Reading or Atlantic City lines, to Camden. Effective February 14, 1918, the application of this rate was extended to include chip board and certain other boards, but through error these boards were eliminated from the tariff on April 27, 1918

The complainant contends that the rate assailed was unreasonable to the extent that it exceeded the above-mentioned commodity rate. Chip board is similar to box board, strawboard, and wood-pulp board, and the Commission has held that the rates on the former shoud not exceed those on the latter. *Schulz Co.* v. *C., M. & St. P. Ry. Co.*, 20 I. C. C., 403; *Western Trunk Line Rate Increases*, 43 I. C. C., 481. The defendants maintain that the class rate applied was reasonable in the absence of a movement sufficient to justify the establishment of a commodity rate. The extent of the movement of chip board from Lockport to Camden does not appear, but complainant has a regular customer at Camden. The defendants admit that the physical conditions surrounding delivery at Camden by the Atlantic City Railroad are not different from those surrounding the Pennsylvania delivery, and they see no reason from a traffic standpoint for not applying the rate for Pennsylvania delivery to deliveries by the Atlantic City Railroad. We note that the sixth-class rate to Camden over the route of movement also applied in connection with the Pennsylvania, that the same rate applied to Philadelphia, Pa., over both the Reading and Pennsylvania, and that the 12.6-cent commodity rate also applied to Philadelphia over both lines. Effective April 27, 1918, following our order of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, the 12.6-cent commodity rate was increased to 14.5 cents, and on June 25, 1918, under General Order No. 28 of the Director General of Railroads, the commodity rate was further increased to 18 cents and the sixth-class rate to 20 cents.

We find that the rate charged was unreasonable to the extent that it exceeded 12.6 cents per 100 pounds; that the complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $21.66, with interest. The New York Central may participate in the payment of the reparation.

Following our order in *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84, the defendants have established in exceptions to the official classification, effective April 15, 1919, a rating of 90 per cent of the sixth-class rate on chip board in carloads. Therefore no order prescribing the rate for the future is required.

An appropriate order will be entered.

No. 10367.[1]

W. A. GOSLINE & COMPANY

v.

DIRECTOR GENERAL, DELAWARE & HUDSON COMPANY, ET AL.

Submitted May 10, 1919. Decided September 25, 1919.

Rate of $3.85 per gross ton on anthracite coal, in carloads, from points in the Pennsylvania anthracite-coal district via Buffalo, N. Y., to Toledo, Ohio, found to have been unreasonable to the extent that it exceeded $3.70. Reparation awarded.

L. G. Macomber for complainant.

John J. Danhof, jr. and *Charles J. Rixey, jr.*, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainants, W. A. Gosline, jr., H. J. Heywood, H. G. Heywood, and J. W. Myers, are copartners engaged in the wholesale and retail coal business at Toledo, Ohio, under the name of W. A. Gosline & Company. By complaints filed December 12, 1918, they allege that the rate of $3.85 per ton charged on numerous carloads of anthracite coal shipped in August and September, 1918, from various points in the Pennsylvania anthracite-coal district, through Buffalo, N. Y., to Toledo, was unreasonable to the extent that it exceeded the subsequently established rate of $3.70 per ton. Reparation only is sought, including an amount equal to the war-revenue tax on the alleged unreasonable portion of the freight charges. Except when otherwise indicated, rates are referred to in amounts per ton of 2,240 pounds, and rates to and beyond Buffalo will include rates to and beyond Buffalo rate points.

The shipments in question, consisting of "prepared sizes" of anthracite, moved over the lines of the Delaware & Hudson Company to Carbondale, Pa., the Erie Railroad to Black Rock, N. Y., a station within the corporate limits of Buffalo, and from that point to destination over the Michigan Central Railroad or the Wabash Railway. Apparently the routing west of Buffalo was specified by the

[1] This report also embraces No. 10367 (Sub-No. 1), Same *v.* Director General, Delaware & Hudson Company, et al.

shipper. The rate charged and legally applicable was constructed on the Buffalo combination, $2.35 to that point and $1.50 beyond.

Prior to the tariff changes following our order of March 12, 1918, in Investigation and Suspension Docket No. 1111, a combination rate of $3 applied over these routes, made up of $2 to Buffalo and $1 beyond. In that order we approved an increase of 15 cents in the aggregate rate. By agreement this increase was evenly divided between the carriers operating east and west of Buffalo, and increased rates of $2.075 and $1.075, respectively, were thereupon established, aggregating $3.15. By General Order No. 28 of the Director General of Railroads, dated May 25, 1918, the following increases in coal rates were directed: 30 cents per net ton on rates of $1 to $1.99 per ton; 40 cents per net ton on rates of $2 to $2.99 per ton; and 50 cents per net ton on rates of $3 or higher per ton; subject to the provisions that—

> Where rates have not been increased since June 1, 1917, the increase to be made now shall be determined by first adding to the present rate fifteen (15) cents per ton, net or gross as rated, or if an increase of less than fifteen (15) cents per ton, net or gross as rated, has been made since that date, then by first adding to the present rate the difference between the amount of that increase and fifteen (15) cents per ton, net or gross as rated; and to the rates so constructed the above increases shall now be added.
>
> Where rates from producing points or to destinations have been based on fixed differentials in cents per ton, such differentials to be maintained, the increase to be figured on the highest rated point or group.

Apportioning to their lines one-half of 55 cents per long ton, equivalent to 50 cents per net ton, based upon the through rate of $3.15, the lines east of Buffalo, effective June 25, 1918; added 27.5 cents to their rates, making the rate of $2.35. A corresponding increase by the Michigan Central and Wabash would have resulted in a rate of $1.35, but those carriers first added 7.5 cents and then 33.6 cents per long ton, the latter equivalent to 30 cents per net ton, to their $1.075 rate, aggregating $1.486, which, under the rule of the general order governing the disposition of fractions, became $1.50.

Complainants contend that the through rate should have been considered in its entirety in applying the increase, because both factors were proportional rates and therefore essentially but parts of the through rate. The rate component to Buffalo was specifically published as a proportional rate, but the tariffs did not restrict the rate west of Buffalo to proportional application. However, the following observations are pertinent in this connection:

(*a*) In approving the increase of 15 cents in Investigation and Suspension Docket No. 1111 we limited the application of such increase between points in official classification territory as follows:

Provided further, That where a through rate between two such points is made by combination, appropriate provision is made in the schedules that the aggregate increase of the factors applicable in such combination shall not exceed fifteen (15) cents per long ton.

(*b*) The Michigan Central tariff, the supplement to which named the increased component west of Buffalo, effective June 25, 1918, provides as follows:

Combination Rates.—Where rates on Anthracite Coal, Anthracite Briquettes, Anthracite Coalettes, Anthracite Coal Screenings, and Anthracite Coal Dust published in this tariff are used as factors in constructing through rates to points of destination in Official Classification Territory, the aggregate through charge to such point of destination will be the combination of rates lawfully published and on file with the Interstate Commerce Commission and other Railroad Commissions on traffic subject to their jurisdiction in effect on March 26, 1918, plus 15 cents per ton of 2,240 pounds.

(*c*) Effective June 25, 1918, the New York, Chicago & St. Louis Railroad, the so-called Nickel Plate, increased its rate from Buffalo to Toledo from $1.075 to $1.35.

There is some discussion in the record as to the proper interpretation of General Order No. 28, but that matter is of importance only in so far as it may show whether the defendant carriers operating west of Buffalo exceeded the authority of the order or whether the rate established represented the then views of the Railroad Administration as to the proper level of the rate intended to be made effective. Admittedly, the Railroad Administration intended by that order "to disturb as little as possible the long-established and widely known relationships," and soon after the order was promulgated its attention was directed to the fact that joint rates over one route and combination rates over another route were contemporaneously in effect between certain points on coal and certain other commodities and that the increase should be restricted to the aggregate rate in order to preserve existing relationships and avoid varying rates between the same points. The carriers were thereupon instructed that the increases authorized on coal rates constructed on combination should be applied only to the "through combination of rates." In these advices it was recognized that in many instances the period of time intervening prior to June 25, 1918, was too short for the carriers to give effect on that date to these instructions, but the desire was expressed that the modified rates be put in force "as rapidly as possible." From the foregoing it appears that in any event the Railroad Administration recognized, prior to June 25, 1918, that the combination rate should be considered in its entirety in applying the increase; and, effective August 31, 1918, and September 6, 1918, the Wabash and Michigan Central, respectively, reduced their rates to $1.35.

While the rates generally from the anthracite mines in Pennsylvania to Toledo are combination rates basing on Buffalo, the Delaware & Hudson Company, in connection with the Pennsylvania Railroad, operating through Pittsburgh, Pa., maintains and has maintained a joint rate from and to these points. That rate was $3.15 prior to June 25, 1918, and, effective that date, it was increased to $3.70. The Michigan Central and Wabash, which also operate from Toledo to Detroit, 58 miles north of Toledo, while participating in the aggregate through rate of $3.85 to Toledo, by way of Buffalo, united with the Delaware & Hudson and Pennsylvania railroads in extending the $3.70 joint rate over their lines through Toledo to Detroit.

Directing their testimony specifically to the component of the rate west of Buffalo, which is testified to have been originally established in competition with the water rate between those points, defendants seek to show that the aggregate rate here assailed was, by reason of that component, unduly low. In comparison with the $1.50 rate they refer to a materially higher basis of rates applying from the mines in question to several New York and New England points, and to rates upon a somewhat higher level from Buffalo to certain Ohio and Michigan points, the difference between these latter rates and the $1.50 rate being also reflected in exhibits in which the through rate assailed is compared with the through rates from these mines to Ohio and Michigan points. The aggregate rate assailed is further compared with the rates on soft coal from Herrin, Ill., to certain Kansas points, which are shown to yield ton-mile earnings somewhat in excess of 5.91 mills, the ton-mile earning at the $3.85 rate, equivalent to $3.4375 per net ton, for approximately 582 miles over the route of movement in connection with the Wabash Railway.

The former rate of $2 from the mines to Buffalo was approved in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220; the $1 rate from Buffalo to Toledo had been in effect for many years prior to the increase following our order in Investigation and Suspension Docket No. 1111, and while the schedules of the carriers in that proceeding proposed an increase of 40 cents in the then aggregate rate from the anthracite mines in Pennsylvania to Toledo, an increase of only 15 cents, as has been stated, was then approved.

The selection by the shipper of routes in connection with the Michigan Central and Wabash, while the lower rate of $3.70 applied over routes in connection with the Pennsylvania or the Nickel Plate, is also urged by defendants as a ground for denying the relief asked. But a shipper is not to be denied a reasonable rate over a through route merely because a lower rate could have been secured by the use of another route. It is testified for complainants that during the

period in question the distribution of coal was controlled by the United States Fuel Administration, that complainants had no way of ascertaining when the shipments would be made, and that they anticipated that a proper adjustment of the rates would be made effective prior to the movement in question.

Defendants also assert, with much emphasis, that no reparation should be awarded in this complaint, because during the period in question the defendants' lines were operated by the government as an emergency measure, the necessity for procuring additional revenue was urgent, the publication of tariffs necessarily slow by reason of the scarcity of workers, also "because the readjustment was general and applied to a vast territory of destination, and because the principle involved arises not only in connection with the readjustment on coal traffic but on other important commodities upon which rates were subsequently revised to spread the advance." These various matters have been given due consideration, but are not controlling here.

We find that the rate assailed was unreasonable to the extent that it exceeded $3.70 per ton of 2,240 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable, and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

No. 10373.

SOUTHERN LUMBER & MANUFACTURING COMPANY

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 31, 1919. Decided September 25, 1919.

Reparation awarded for failure of carrier properly to reconsign to Philipsburg, Pa., a carload of lumber from Theba, Ala., originally consigned to Chattanooga, Tenn.

T. M. Henderson for complainant.

Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation dealing in lumber at Nashville, Tenn., alleges by complaint seasonably filed that the transportation and demurrage charges collected on one carload of lumber shipped September 11, 1917, from Theba, Ala., originally consigned to Chattanooga, Tenn., and reconsigned to Philipsburg, Pa., were unreasonable because of defendants' failure properly to comply with reconsignment instructions. Reparation is asked and the establishment of a reasonable rate for the future, but no evidence was offered bearing upon the reasonableness of the rates. Rates are stated in cents per 100 pounds unless otherwise indicated.

The shipment moved by way of the Central of Georgia Railway, hereinafter called defendant, to Chattanooga billed to complainant and was there held for instructions. September 20, 1917, complainant wrote defendant's agent at Nashville to reconsign the shipment to Philipsburg, Pa. The agent received these instructions on September 21, and forwarded them by mail to Chattanooga, where they were received by defendant's division freight agent September 22. On that day complainant telegraphed like instructions to the defendant's local agent at Chattanooga. The instructions to the agent at Nashville and those in the telegram as sent were to divert the car to "West Penn. Lumber Company, Philipsburg, Pa., Pennsylvania Railroad delivery." Through error in transmission the telegram

when received at Chattanooga about 1.40 p. m., September 22, read "Divert Erie 79973 West Penna Philadelphia Pa. delivery." Defendant's agent at Chattanooga disregarded the word "Penna" in the telegram and billed the shipment to complainant at West Philadelphia. The car was delivered to the Southern Railway at Chattanooga the same afternoon and on September 28 it was at Bristol, Va., held because of an embargo of the Norfolk & Western Railway against Philadelphia. The date on which it arrived at Bristol is not shown of record.

Complainant did not know of the incorrect billing until it received on October 2 a letter written by defendant's agent at Chattanooga, September 29, pointing out the discrepancy between the telegram as received and the instructions to the agent at Nashville. Complainant immediately repeated its previous reconsignment instructions to the defendant. Correct instructions were contained in a letter from defendant's agent at Chattanooga to the agent of the Southern Railway at Chattanooga dated October 5, 1917, which apparently did not reach the Southern Railway until October 18. The Norfolk & Western Railway finally received the correct instructions from the Southern Railway on November 7. In the meantime the car left Bristol October 16 and arrived at Philadelphia about October 31. It was billed from there to Philipsburg on November 17 and reached destination a few days later.

The shipment weighed 57,200 pounds and moved by way of defendant's line to Chattanooga; Southern Railway to Bristol; Norfolk & Western Railway to Hagerstown; Cumberland Valley Railroad to Harrisburg, Pa.; Pennsylvania Railroad from Harrisburg to Philadelphia, and from Philadelphia to Philipsburg. In addition to a war tax, freight charges of $237.95 were collected at rates of 29 cents to Philadelphia, and $2.52 per short ton beyond, legally applicable in addition to $50 demurrage at Philadelphia, $8 demurrage awaiting orders at Chattanooga, and $5 for reconsignment. A joint rate of 34 cents applied via the route of movement to Harrisburg thence via the Pennsylvania Railroad direct to destination. Complainant asks refund to basis of the 34-cent rate plus demurrage and reconsignment charge at Chattanooga, but with no charge for demurrage at Philadelphia.

Tariffs of defendant and of the Southern Railway authorized reconsignment at the joint through rate at a charge of $5, provided "that reconsignment shall not be made when in conflict with notices of embargoes." The record indicates that the Norfolk & Western Railway had embargoes against Philipsburg from August 24 to September 14, and from September 27 to the end of the year. Under the latter embargo the shipment could have been reconsigned via the

Norfolk & Western Railway if it had been billed on or before September 27. Unquestionably, if defendant's agents had been duly diligent, the reconsignment of this car to Philipsburg should have been effected prior to September 27. While there were delays all along the line in the transmission of these reconsigning orders, the fault, in the first instance, was defendant's, and this record affords no basis for attempting to divide the responsibility for the excess freight charges. The tariff under which the demurrage for detention at Philadelphia was charged provided that no demurrage would be collected where railroad errors prevented proper tender or delivery. The detention of this car at Philadelphia was due to a railroad error and therefore no demurrage legally accrued at that point. *Schuh-Mason Lumber Co.* v. *M. & O. R. R. Co.*, 46 I. C. C., 365.

We find that defendant was negligent in not effecting the reconsignment of the above-described shipment in accordance with complainant's instructions; that complainant made the said shipment and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the joint rate in effect from point of origin to Philipsburg, plus the reconsigning charge and the demurrage that accrued at Chattanooga; and that it is entitled to reparation from the Central of Georgia Railway Company in the sum of $43.47, with interest; and from the Pennsylvania Railroad Company in the sum of $50, the amount of the demurrage charges illegally collected for detention at Philadelphia, with interest. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, no reparation will be awarded in respect of excess war taxes paid.

An order awarding reparation will be entered.

No. 10377.

OATMAN CONDENSED MILK COMPANY

v.

DIRECTOR GENERAL, BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY, ET AL.

Submitted May 25, 1919. Decided September 25, 1919.

Rates on canned condensed milk, boxed, in carloads, from Neillsville, Wis., to trunk line territory found to have been unreasonable in so far as they exceeded rates contemporaneously in effect on canned vegetables, boxed, in carloads, from and to the same points. Reparation awarded.

F. M. Elkinton for complainant.

Richard L. Kennedy and *Fred G. Wright* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant corporation is engaged in condensing milk at Neillsville, Wis. By complaint filed November 11, 1918, as amended, it alleges that the rates charged on canned condensed milk, boxed, in carloads, from Neillsville to New York, N. Y., and related points in trunk line territory, are and have been since August 1, 1916, unreasonable and, in their relation to the corresponding rates on canned vegetables, unduly prejudicial, in violation of sections 1 and 3 of the act to regulate commerce, and also in violation of section 10 of the federal control act. It asks reasonable rates for the future, not exceeding those on canned vegetables, and reparation. Rates are hereinafter stated in cents per 100 pounds. At the hearing complainant waived claim for reparation on all shipments made to the United States government.

Neillsville is a local point on the Chicago, St. Paul, Minneapolis & Omaha Railroad, 23 miles west of Marshfield, Wis. Rates to points in trunk line territory are related to the rate to New York. There was in effect when the complaint was filed a combination rate of 65 cents on canned condensed milk, boxed, in carloads, from Neillsville to New York, made up of the fifth-class rate of 20 cents from Neillsville to Milwaukee, Wis., applicable to interstate traffic and governed by the western classification, and the fifth-class rate of

45 cents, governed by exceptions to the official classification, beyond. From group 7 points on the Chicago & North Western Railway in Wisconsin, and from Neillsville, there were contemporaneously in effect to New York joint through rates of 55 cents on canned vegetables, boxed, in carloads.

The complainant points out that canned condensed milk is given the same rating as canned vegetables, fifth class in carloads, in the western and southern classifications, and cites various tariffs which publish the same commodity rates on both kinds of traffic. Canned vegetables are rated fifth class in the official classification, and canned condensed milk is so rated in the governing exceptions to that classification. Particular reference is made to *Whiteland Canning Co.* v. *P., C., C. & St. L. Ry. Co.*, 22 I. C. C., 261, and *Hires Condensed Milk Co.* v. *P. R. R. Co.*, 38 I. C. C., 441, in which the Commission prescribed rates on canned condensed milk equal to the contemporaneous canned vegetable rates, both carload and less than carload, and to the fact that equal rates apply on canned vegetables and canned condensed milk from all Wisconsin points which produce both. Since the hearing tariffs have been filed with the Commission, effective May 28, 1919, providing the same rates on condensed milk from Neillsville to points in trunk line teritory as apply on canned vegetables.

The defendants submitted no counter comparisons, but contend that in the cases above cited the Commission did not fix rates on canned condensed milk with reference to those on canned vegetables. They urge that it does not necessarily follow that there should be an equality of rates between canned vegetables and canned milk, and that the matters submitted do not prove that the rates assailed, which were on the classification basis prescribed in the *Hires Case*, *supra*, were unreasonable *per se*. But an examination of that case discloses that the principal comparisons were with other canned food products taking fifth-class rates in carloads.

In this case the defendants voluntarily established on the same comparable commodities from Wisconsin to trunk line territory a lower general basis of rates, and have recently extended it to include complainant's commodity.

Upon all the facts of record we are of opinion and find that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously applicable on canned vegetables, boxed, in carloads, from Neillsville to points in trunk line territory; that complainant made shipments under the rates assailed and paid and bore the charges thereon; that it was damaged thereby and, except on shipments made to the United States government and on shipments which are barred, is entitled to reparation in the difference between

the charges paid and those that would have accrued on the basis herein found reasonable, with interest. The amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, which should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. No order for the future is necessary.

No. 10380.

CROWN WILLAMETTE PAPER COMPANY

v.

DIRECTOR GENERAL, SOUTHERN PACIFIC COMPANY, ET AL.

Submitted March 27, 1919. Decided September 25, 1919.

Carload rates on pulp grindstones from Empire and Peninsula, Ohio, and Opekiska, W. Va., to Camas, Wash., Pulp, Oreg., and Floriston, Calif., found not to have been or to be unreasonable. Complaint dismissed.

John J. Seid for complainant.

Elmer Westlake for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant corporation is engaged in the manufacture of paper products at Camas, Wash., Pulp, Oreg., and Floriston, Calif. By its complaint, filed December 30, 1918, it alleges that the rates charged by the defendant carriers on eleven carloads of pulp grindstones shipped from Empire and Peninsula, Ohio, and Opekiska, W. Va., to Camas, Pulp, and Floriston, between November 15, 1916, and June 12, 1918, were unreasonable. Reparation and the establishment of reasonable rates are asked. The charges on two shipments from Empire to Pulp, which moved in 1916, were paid more than two years prior to the filing of the complaint and the claims thereon are barred. Rates are stated herein in amounts per 100 pounds.

Pulp grindstones are made from high-grade sandstone, are circular in shape, 54 inches in diameter, 27 inches thick, smoothly finished with a round hole in the center, and weigh about 5,000 pounds each. When the shipments moved they were valued at between $100 and $125 per stone at point of origin, but their value at the time of the hearing was $170 each. They are ordinarily shipped uncrated on flat cars, ten stones to the car, generally in one layer only. In use the pulp grindstone is revolved upon a shaft, a stream of water is played upon it, and the pulpwood is pressed against it under hydraulic pressure, the revolving stone reducing the wood to pulp.

The shipments moved over defendants' lines and charges on six of them from all the points of origin to Pulp were collected at rates of

87.5 cents and 88 cents; on two from Opekiska to Camas at 87 cents and $1.15; and on the one from Peninsula to Floriston at 80 cents. The commodity rates on grindstones, legally applicable, were 87.5 cents on all the shipments to Pulp; 87 cents and $1.15 respectively on the two shipments to Camas; and 92 cents on the shipment from Peninsula to Floriston, minimum weight 36,000 pounds. There are outstanding undercharges on some shipments and overcharges on others.

When these shipments moved defendants maintained a commodity rate of 55 cents, minimum 60,000 pounds, on building stone (except marble, jasper, onyx, and slate), rough quarried, sawed, hammered, or cut to dimension, from Chicago, Ill., to the destination points. There were no joint rates on building stone from and to the points of origin and destination concerned herein. The rates contemporaneously in effect on building stone to Chicago were as follows, an increase having been made in each of the rates during the period of movement: 15.8 cents and 17.5 cents from Empire; 8.4 cents from Peninsula; and 19.5 cents and 23.5 cents from Opekiska. On June 25, 1918, the rates on stone were increased to 84 cents from Empire, 66.5 cents from Peninsula, and 86.5 cents from Opekiska to the destination points in question under General Order No. 28 of the Director General of Railroads.

Complainant does not attack the rates on grindstones generally, its contention being that the stones here under consideration, by reason of their size and use are dissimilar to ordinary grindstones; that they are more analogous to building stone; and that a reasonable rate thereon should not exceed the building-stone rates contemporaneously applicable from Chicago, plus an arbitrary of 10 cents for the haul up to that point. Complainant referred to the ordinary commercial grindstones usually found in hardware stores which are small, used chiefly to sharpen tools, and stated to be worth about $30 per ton at point of origin. It appears that large grindstones weighing more than 3,000 pounds are used in the manufacture of saws, and complainant's witness admitted that pulp grindstones ordinarily move at the grindstone rates throughout the country.

Following *Transcontinental Commodity Rates*, 48 I. C. C., 79, the carriers increased their rates, effective March 15, 1918, on grindstones, including pulp grindstones in carloads (minimum 36,000 pounds), to $1.05 from Empire and Peninsula and $1.15 from Opekiska. On June 25, 1918, these rates were increased under General Order No. 28 to the present bases of $1.315 from Empire and Peninsula and $1.44 from Opekiska to the destinations here in question.

The western classification, which governs, rates building stone, other than jasper, onyx, and marble, class D, minimum 36,000 pounds, and grindstones, class B, minimum 36,000 pounds.

It was testified on behalf of defendants that there is no commercial or transportation reason why the rates on pulp grindstones should be lower than the rates on commercial grindstones; that building stone is usually loaded to the marked capacity of the cars, about 100,000 pounds; and that the movement of pulp grindstones is relatively small.

Complainant introduced no evidence to show that the conditions surrounding the transportation of pulp grindstones were substantially similar to those applicable to the transportation of building stone. The 87.5-cent rate applicable from Empire to Pulp, representative points, yields 6.5 mills per ton-mile, and, based on an average loading of 50,000 pounds, 16.3 cents per car-mile for the haul of 2,691 miles. The present rate yields 9.8 mills per ton-mile and 24.4 cents per car-mile.

We find that the rates assailed were not and that the present rates are not unreasonable. The parties should adjust the charges on the basis of the applicable rates. An order will be entered dismissing the complaint.

No. 10396.

FORT SMITH COMMISSION COMPANY

v.

DIRECTOR GENERAL, KANSAS CITY SOUTHERN RAILWAY COMPANY, ET AL.

Submitted March 21, 1919. Decided September 25, 1919.

Carload shipments of apples from Tontitown, Ark., to Fort Smith, Ark., by an interstate route found to have been misrouted. Reparation awarded.

C. D. Mowen for complainant.

J. M. Souby and *B. A. Rogers* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in the wholesale fruit and produce business at Fort Smith, Ark., by complaint seasonably filed, alleges that, due to misrouting, unreasonable charges were collected on eight carloads of apples shipped in September and October, 1917, from Tontitown, Ark., to Fort Smith, Ark., by an interstate route, and prays reparation. Rates hereinafter stated are in cents per 100 pounds.

The eight shipments, weighing in the aggregate 265,000 pounds, were delivered to the Kansas City & Memphis Railway Company at Tontitown, and moved over that line to Siloam Springs, Ark., and the Kansas City Southern Railway to Fort Smith. The first seven shipments, aggregating 218,300 pounds, were not routed by complainant, but, contrary to the testimony, the "memorandum" bill of lading indicates that the eighth and last shipment was routed as it moved, and it must therefore be excluded. Charges were assessed at the legally applicable rate of 19 cents. A combination rate of 14.28 cents was contemporaneously applicable over an intrastate route, made up of 5.78 cents over the Kansas City & Memphis Railway to Fayetteville, Ark., and 8.5 cents over the St. Louis-San Francisco Railway to Fort Smith. The distance over the interstate route is 127 miles, and by way of the route over which the lower rate applied is 76 miles.

Charges were collected in the sum of $502.41. The applicable charges were $503.50, and there is, therefore, an undercharge of $1.09.

The charges collected on the first seven shipments amounted to $414.68, and at the rate over the intrastate route would have been $311.73.

Three of the shipments, although made during the month of October, 1917, were not delivered until after November 1, 1917, upon which date the federal war tax became effective. On these shipments a war tax of $6.02 was collected, and complainant, urging that it was not properly assessed, asks that it be refunded accordingly. The lawfulness of the imposition of the tax is not within our province to determine. In any event we can not award reparation in the amount of a war-revenue tax. *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308.

We find that the Kansas City & Memphis Railway Company misrouted the first seven shipments; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged by the misrouting in the difference between the charges paid and those that would have accrued had the shipments been forwarded over the route by which the 14.28-cent rate applied; and that it is entitled to reparation from the Kansas City & Memphis Railway Company in the sum of $102.95, with interest.

An order awarding reparation will be entered.

No. 10399.

RUDDOCK ORLEANS CYPRESS COMPANY

v.

DIRECTOR GENERAL, NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY, ET AL.

Submitted May 16, 1919. Decided September 26, 1919.

Rate on lumber, in carloads, from New Orleans, La., to Violet, La., found unreasonable. Demurrage charges at New Orleans found legally applicable. Reparation awarded.

A. F. Barnett for complainant.
George Janvier for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of cypress-lumber products, with its main office in New Orleans, La. By complaint seasonably filed it alleges that the rate charged on a carload of lumber shipped October 8, 1918, from New Orleans to Violet, La., was unreasonable and unduly prejudicial, and that the demurrage collected thereon for detention at New Orleans was illegal. It asks reparation and a reasonable rate for the future. Rates are stated hereinafter in cents per 100 pounds.

The lumber was originally shipped from Lutcher, La., to New Orleans, over the Yazoo & Mississippi Valley Railroad. It was reshipped from New Orleans, in the same car under new billing, over the Louisiana Southern Railway, hereinafter called defendant, to Violet, a local point on defendant's line, 11 miles from New Orleans. There was no joint rate from Lutcher to Violet, and only the local rate from New Orleans to Violet is attacked. The shipment weighed 55,100 pounds and charges in the sum of $63.37, plus a war tax, were collected for the transportation from New Orleans to Violet at the applicable class A rate of 11.5 cents.

Prior to June 25, 1918, there was in effect a commodity rate of 3 cents on this traffic from New Orleans to Violet, established on November 10, 1917. On June 25, 1918, this rate was increased to 4 cents under General Order No. 28 of the Director General of Railroads. Rates so initiated by the Director General are subject to our juris-

diction. On June 30, 1918, the 4-cent rate expired, by limitation, leaving in effect the class rate assailed. Complainant alleges that the rate charged was unreasonable to the extent that it exceeded the 4-cent rate in effect prior to July 1, 1918, and shows that at the time of movement a rate of 10 cents applied from and to the same points on articles manufactured from lumber, such as sash, doors, and blinds; that a rate of 6.5 cents applied on lumber to Violet from Aribi, La., a point on defendant's line intermediate to New Orleans and 7½ miles from Violet, and from New Orleans to Baton Rouge, La., 79 miles. There was no showing of similarity of transportation conditions affecting the rate last mentioned and that attacked. On February 6, 1919, the Director General established a rate of 7 cents on cypress lumber, in carloads, from New Orleans to Violet.

Defendants stated that the 7-cent rate resulted from the application to the distance from New Orleans to Violet of a scale ranging from 6 cents for 10 miles and under to 10 cents for over 40 and less than 50 miles; and that this scale was considered reasonable and was submitted to and approved by the Southern Cypress Manufacturers Association before its establishment. They cited, by way of comparison, distance scales of lumber rates on various lines operating in Louisiana and Texas, under which the rates for a distance of 11 miles ranged from 7 to 9 cents. Attention was also called to the fact that defendant's road is short, originates practically no lumber, and that the lumber consumption thereon is small. Substantially no evidence of undue prejudice was adduced.

The evidence as to the demurrage on this car is incomplete and conflicting. The original bill of lading introduced in evidence covering the shipment was on a blank of the New Orleans, Texas & Mexico Railway, which leased and operated defendant's line, dated October 8, 1918, and signed by defendant's agent. Defendant received the car on the afternoon of October 9, 1918, from the New Orleans Terminal Company. On the morning of the 10th of October, according to defendant's witness, it notified the shipper, by telephone, that Violet was a "prepay station" and that the shipment would not be forwarded until the charges were paid. Defendant's witness testified that each day until October 14, 1918, complainant was notified of the necessity for prepayment of the charges and that on the date mentioned the transportation charges and $12 demurrage for detention on October 10, 11, 12, and 14, the 13th being Sunday, were paid and the shipment moved to destination.

Complainant does not attack the measure of the demurrage charges, but contends that they were unlawfully assessed. Its evidence is that when first notified by defendant that prepayment was necessary, which it claims was on the 9th instead of the 10th of

October, it informed defendant that it was mailing a check in payment thereof, and was told by defendant that the shipment would be allowed to go forward, which defendant denies; that it received no notice as to the detention of this shipment between October 9 and 14 pending the prepayment of charges; and that had it known that the shipment was being held it would have paid the charges promptly. Defendant's witness testified that the check was never received and complainant admits that it was not cashed. If the check was mailed, and this fact is not definitely established, the mere mailing did not satisfy the tariff obligation to prepay charges.

Defendant stated that demurrage was collected in accordance with rule 6, section D, of its demurrage rules, which provided:

> Cars received from switching lines and held by carrier lines for billing instructions are subject to demurrage charges from the first 7 a. m. after arrival on these railroads until billing instructions are received, with no free time allowance and without notice.

This rule was not applicable to this shipment as defendant was not holding the car for "billing instructions." The billing instructions were accepted by that line on October 8, as shown above, and the shipment was held for prepayment of freight charges. Cars so held were not specifically covered by the demurrage rules, but rule 1 provided:

> RULE 1.—*Cars subject to rules.*
>
> Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these demurrage rules. * * *

It is our view that this rule is sufficiently broad to cover the shipment. Rule 7, after providing demurrage charges on cars held for unloading, provided a charge of $3 per day on cars held for any other purpose. The rules make no provision for notice or free time in connection with such cars. Complainant contended that under General Order No. 25 of the Director General it was entitled to a definite period in which to prepay charges. This order relates only to credit arrangements and could not, in any event, modify or change provisions of the published demurrage rules.

Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, no reparation will be awarded in respect of excess war taxes paid.

We find that the demurrage charges paid were legally applicable; that the rate assailed was unreasonable to the extent that it exceeded 7 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation in the sum of $24.80, with interest.

An order will be entered accordingly.

No. 10438.

PIQUA MILLING COMPANY

v.

ERIE RAILROAD COMPANY AND DIRECTOR GENERAL.

Submitted May 14, 1919. Decided September 25, 1919.

Demurrage and storage charges assessed at Buffalo, N. Y., on an interstate carload shipment of sacked corn meal found to have been in excess of those provided by the defendant carrier's tariffs. Reparation awarded.

J. F. Stewart and *Frank L. Marshall* for complainant.

D. E. Minard for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation milling flour and dealing in grain at Piqua, Ohio, alleges, by complaint filed February 4, 1919, that unreasonable demurrage and storage charges were assessed on an interstate carload shipment of sacked corn meal held at Buffalo, N. Y., in 1918. Complainant prays reparation, to include an amount equal to a portion of the war-revenue tax on the charges assailed.

The car arrived at Buffalo, April 21, 1918, over the Erie Railroad, hereinafter called the defendant, and notice of arrival was given the consignee early the following day. April 25 the defendant wired complainant that the consignee had refused delivery, and to "wire disposition or car will be stored immediately." In reply, the same day, complainant wired defendant: "Matter is up with Food Administration. Possibly better be stored." The defendant did not act at once upon this advice, and the meal remained in the car until May 7, following. On that date, apparently without further advice from complainant, it was unloaded by defendant and stored in its freight warehouse, where it remained until October 10, following, Unloading and reloading charges were made, but are not questioned. Excluding free time, Sundays, and legal holidays, charges were assessed as follows: Demurrage, 12 days, at $3 per day for the first 4 days, $6 per day for the next 3 days, and $10 per day for the remainder, or $80 in all; storage, 131 days, at $10 per day, or $1,310;

a total of $1,390. The storage charges were assessed under the following contemporaneous tariff provision:

Rule 5. (*f*) Carload freight which is unloaded by this company for the purpose of releasing needed equipment will be subject to storage charge the same as would have accrued under car demurrage rules had the freight remained in the car, * * *.

A letter from the complainant to its brokers at Buffalo, April 27, indicates that it understood its above-quoted reply to defendant, April 25, to direct a transfer of the meal to storage. Other correspondence was had, in part with the brokers and in part with complainant, before and after the car was unloaded, in which the defendant pressed for disposition orders. Complainant insists that the shipment should promptly have been transferred from the car to a public warehouse, but the absence of proof of damage by reason of defendant's failure to take that course, particularly in view of our conclusions, renders it unnecessary to consider that question.

Further contemporaneous provisions of defendants' storage tariff were as follows:

Rule 1. (*b*) Other carload freight [than explosives or other dangerous articles] held in cars for delivery and subsequently unloaded in or on railroad premises at request of shipper or consignee is subject to demurrage rules while in cars and to these storage rules after it is unloaded. If unloaded by the railroad company the actual cost of unloading will be in addition to the storage charge, and if reloaded by the railroad company the actual cost of reloading will also be in addition to the storage charge. (See Rule 5–f.)

* * * * * * *

Rule 3. (*a*) Forty-eight hours (two days) free time will be allowed on all commodities (except the more dangerous explosives as described in Rule 6-A) for the removal of inbound freight from car or railroad premises, * * *.

* * * * * * *

Rule 5. (*a*) Freight, except Explosives or other dangerous articles (see Rule 6), held in or on railroad premises in excess of free time allowed, is subject to storage charges at the rate of one-half (½) cent per 100 pounds per day, or, at the option of the railroad, may be sent to public warehouses. (See Rule 5-f and Rule 7.)

* * * * * * *

Rule 7. At the points named below, less carload freight not removed within the free time specified in Rule 3 will be stored in public warehouses at owner's risk and cost, including expense of cartage or switching: * * * Buffalo, N. Y. * * *.

It will be observed that the general storage rate was that provided by rule 5 (*a*), viz, one-half cent per 100 pounds per day, and manifestly applied to a storage service requested or authorized by the shipper or consignee. The rate provided by rule 5 (*f*), equal to the concurrent demurrage rate, was for application in the indicated special circumstances. Both rules applied to freight unloaded by the carrier. At the time the foregoing rules were adopted the defendant's demurrage rate was but $1 per day, and the application of its

equivalent to the storage of any shipment exceeding 20,000 pounds made a lower charge than did the general storage rate. But, effective February 10, 1918, pursuant to General Order No. 7 of the Director General of Railroads, the demurrage rate was increased to $3 per day for the first four days, $6 per day for the next three days, and $10 per day thereafter. By the terms of rule 5 (*f*) the special storage rate was automatically increased in the same amounts, thereby greatly exceeding the general storage rate.

In its inception the manifest purpose of rule 5 (*f*), in any case in which the carrier found it necessary or expedient to transfer a shipment from car to storage, of its own motion and without request or authority from the shipper, in order to release needed equipment, was to protect the shipper in the lower rate or charge which would have applied had the shipment been retained in the car. In other words, the shipment was virtually held under demurrage, at the rate to which the shipper, not having requested or agreed to a storage service, was entitled. But during the period here in question the situation had been reversed, in that the equivalent of the demurrage charge had become much the higher for the storage service.

We need here express no opinion as to the rate or charge to which the complainant would otherwise have been entitled, as we think that the above-quoted reply of April 25, if not to be construed as directly requesting a transfer of the shipment, at least fairly authorized the storage which defendant's communication announced as the impending alternative if a disposition order were not forthcoming. In this view the storage clearly was not governed by rule 5 (*f*). Allowing another day for unloading, the demurrage should have terminated with the inclusion of April 26, and storage charges thenceforward should have been assessed at the rate provided by rule 5 (*a*). It is not shown that the applicable charges were violative of the act.

The case is unlike *Barber & Co.* v. *C., C., C. & St. L. Ry. Co.*, 51 I. C. C., 194, in which we upheld charges under a tariff rule essentially like rule 5 (*f*), based on a demurrage charge of $1 per day and a track-storage charge of $2 per day after the second day, but in which case the carrier had been obliged to remove the shipment from car to storage solely upon its own motion and to release the equipment. And we are unable to acquiesce in defendant's contention that rule 5 (*a*) related only to less-than-carload traffic. Rule 7, above quoted, did so relate and made a special provision respecting that traffic, commonly unloaded by carriers and placed in their freight houses; but rule 5 (*a*) was unrestricted and, even more clearly when read in the light of rule 1 (*b*), included carload freight.

Complainant was neither consignor nor consignee of the shipment, but is shown by the record to have been the real party in interest and entitled to recover. *Oden & Elliott* v. *S. A. L. Ry.*, 37 I. C. C., 345. The shipment weighed 57,600 pounds, and the total applicable charges, for demurrage to and including April 26 and storage thereafter until removed, were $415.08. We find that the charges assailed were illegal in so far as they exceeded the latter amount; that the illegal charges were paid and borne by complainant; that complainant was damaged thereby in the difference between the demurrage and storage charges so paid and borne and those that accrued under the applicable tariff provisions; and that it is entitled to reparation in the sum of $974.92, with interest. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we can not award reparation in any amount representing the war-revenue tax. But this holding is not to be construed as interposing any obstacle to refund of the war tax on the overcharge in accordance with regulations promulgated by the Commissioner of Internal Revenue.

An order of reparation will be entered.

No. 10459.

E. I. DU PONT DE NEMOURS & COMPANY
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY, DIRECTOR GENERAL, ET AL.

Submitted June 28, 1919. Decided September 25, 1919.

Rates on soda ash in carloads from Newark, N. J., to Hopewell, Va., including the factor from Petersburg, Va., to Hopewell, not shown to have been unreasonable. Shipments misrouted by initial carrier and overcharged. Reparation awarded.

Harvey S. Farrow for complainant.
Theodore W. Reath and *Alexander H. Elder* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of explosives. By complaint filed February 17, 1919, it alleges that defendants misrouted 14 carloads of soda ash shipped from Newark, N. J., to Hopewell, Va., in November, 1917; that the rates exacted were and are unreasonable, in violation of section 1 of the act to regulate commerce and of section 10 of the federal control act; and that a rate of 7 cents per 100 pounds on soda ash, in carloads, from Petersburg, Va., to Hopewell is unreasonable. Reparation and reasonable rates for the future are sought. Rates herein stated are in cents per 100 pounds, and are those in effect when the shipments moved.

The shipments were tendered to the Central Railroad Company of New Jersey at Newark, routed by the shipper, "CNJ.–P&R.–N&W." The carriers named do not constitute a continuous route from origin to destination, and no joint through rates were in effect by any route. It does not appear that the local agent at Newark sought from the shipper more complete billing instructions. The shipments were waybilled and moved over the Central Railroad of New Jersey to Allentown, Pa., the Philadelphia & Reading Railway to Shippensburg, Pa., the Western Maryland Railway to Hagerstown, Md., and the Norfolk & Western Railway to Hopewell, a distance of 694 miles. The rate charged, 45 cents, appears to have been composed of rates of 28 cents from Newark to Halsey, Va., and 17

cents from Halsey to Hopewell. There was contemporaneously in effect, over the route of movement, a combination rate of 35.3 cents, composed of a joint commodity rate of 15.8 cents from Newark to Buena Vista, Va., and a sixth-class distance rate of 19.5 cents thence to destination; and the shipments accordingly were overcharged 9.7 cents per 100 pounds. The shipments could have moved, consistently with the routing instructions, over the Central Railroad of New Jersey to Bound Brook, N. J., the Philadelphia & Reading to Park Junction (Philadelphia), Pa., the Baltimore & Ohio Railroad to Potomac Yard, Va., the Washington-Southern and Richmond, Fredericksburg & Potomac railways to Richmond, Va., the Seaboard Air Line or Atlantic Coast Line to Petersburg, and the Norfolk & Western to Hopewell, a distance of approximately 386 miles. The contemporaneously applicable rate by this route was 26.5 cents, composed of a joint rate of 19.5 cents from Newark to Petersburg and the sixth-class distance rate of 7 cents beyond.

The defendants point out that there are joint rates from points on the Central Railroad of New Jersey to certain territories served by the Norfolk & Western, applicable only through Hagerstown, and contend that Hagerstown is the customary gateway to Norfolk & Western points. They maintain that, in the absence of joint rates to Hopewell, the agent at Newark did not misroute the shipments and that they were under no obligation to send them by the cheapest route. They urge that we should hold that "whenever the shipper undertakes to furnish routing instructions, the carrier wholly discharges its duty if it routes the shipment in harmony with the instructions as given, even though a cheaper route consistent with such instructions is available."

It is settled that when a shipper's routing instructions are incomplete, but are consistent with the cheapest available and reasonable route, the carrier must send the shipment by that route or answer in damages for misrouting. *Conference Ruling 214–C; Bruner Co.* v. *S. Ry. Co.*, 40 I. C. C., 549; *Green Bay Specialty Co.* v. *N. Y. & L. B. R. R. Co.*, 50 I. C. C., 237; *Central Pennsylvania Lumber Co.* v. *B. & S. R. R. Corp.*, 52 I. C. C., 329; *Ferguson Lumber Co.* v. *L. & A. Ry. Co.*, 52 I. C. C., 486.

In the instant case, the route carrying the 26.5-cent rate was consistent with the billing instructions, was reasonable and available, and, so far as the record discloses, was the cheapest route, whereas the route of movement was circuitous.

While complainant specifically attacks the 7-cent rate from Petersburg to Hopewell, it is interested in it only as a factor of the through rate by way of Potomac Yard, and this through rate the complaint

does not put in issue. The 7-cent rate is the sixth-class rate, and it is not alleged that soda ash is improperly classified.

We find that the applicable through rate is not shown to have been unreasonable, but that the shipments were overcharged, as above; that the Central Railroad Company of New Jersey misrouted the shipments; that complainant made the shipments as described and paid and bore the freight charges thereon; that it was damaged by the misrouting in the difference between the applicable charges and those which would have accrued had the shipments moved by the route over which the 26.5-cent rate contemporaneously applied; and that it is entitled to reparation in that amount from the Central Railroad Company of New Jersey and in the amount of the overcharges from all the defendants, except the Director General of Railroads, with interest. The exact amount of reparation due can not be determined upon this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10494.

E. I. DU PONT DE NEMOURS & COMPANY
v.
DIRECTOR GENERAL, PHILADELPHIA & READING RAILWAY COMPANY, ET AL.

Submitted May 7, 1919, Decided September 25, 1919.

Rate of $1.90 per 100 pounds on saltpeter (nitrate of potash), in carloads, from Carney's Point, N. J., to American Lake, Wash., found to have been unreasonable to the extent that it exceeded the subsequently established rate of $1.10. Reparation awarded.

Harvey S. Farrow for complainant.
R. V. Fletcher and *Alex. M. Bull* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation, by complaint filed March 5, 1919, alleges that the rate on two carloads of saltpeter (nitrate of potash) shipped on January 17, 1918, from Carney's Point, N. J., to American Lake, formerly Du Pont and now called Camp Lewis, Wash., was unreasonable. Reparation is asked.

The shipments aggregated 168,210 pounds and charges were collected in the sum of $3,196, at the legally applicable fifth-class rate of $1.90 per 100 pounds. Subsequent to the movement, on February 11, 1918, a rate of $1.10 per 100 pounds became effective from all points in Trans-Continental Freight Bureau group A, which includes Carney's Point and Montchanin, Del., to American Lake.

In *Du Pont de Nemours Powder Co.* v. *P. & R. Ry. Co.*, 51 I. C. C. 621, decided December 4, 1918, we found that the rate on nitrate of potash, in carloads, from Montchanin, to the destination in question was unreasonable as applied to shipments moving between May 15, 1915, and May 15, 1916, to the extent it exceeded $1.10 per 100 pounds.

The defendants admit that the transportation conditions from Carney's Point to American Lake are practically identical with those from Montchanin and express willingness to make reparation to the extent that the rate charged exceeded $1.10 per 100 pounds.

We are of opinion and find that the rate charged was unreasonable to the extent it exceeded $1.10 per 100 pounds; that complainant

made the shipment as described and paid and bore the freight charges thereon and that it was damaged in the amount of the difference between the charges collected and what would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of $1,345.69, with interest.

An order awarding reparation will be entered.

No. 10468.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY, ET AL.

Submitted May 6, 1919. Decided September 25, 1919.

Rate of 54.5 cents per 100 pounds charged on specified carloads of wet nitrocellulose from Norfolk, Va., to Carney's Point, N. J., found unreasonable to the extent that it exceeded the contemporaneous rate of 38.9 cents applicable from Hopewell, Va., to which Norfolk is intermediate by the route of movement from Norfolk. Reparation awarded.

H. S. Farrow for complainant.

Henry Wolf Biklé for all defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed February 15, 1919, and amended, complainant, a corporation, alleges that the rate exacted on specified carloads of wet nitrocellulose shipped from Norfolk, Va., to Carney's Point, N. J., in February, 1918, was unreasonable and in violation of the fourth section of the act, and asks reparation.

The shipments moved originally from Hopewell, Va., in complainant's own barges for transportation to destination, but owing to ice in Norfolk harbor they were unloaded at that point into cars and shipped thence by rail over the defendant lines then under federal control. They were charged the applicable first-class rate of 54.5 cents per 100 pounds for the rail haul from Norfolk. Contemporaneously there was in effect from Hopewell through Norfolk

to Carney's Point, by the route of movement from Norfolk, an all-rail commodity rate on wet nitrocellulose, in carloads, of 38.9 cents per 100 pounds. The tariff containing this rate provided, in accordance with rule 77 of Tariff Circular 18–A, that upon application therefor rates would be established from or to intermediate points not exceeding those from or to more distant points on one day's notice. The complainant did not make application for the Hopewell rate prior to the shipments, and it has not yet been published.

The notation on the tariff, in accord with rule 77, we have held to be "a substantial compliance with the requirements of the fourth section." *Herrmann & Co.* v. *N. Y., N. H. & H. R. R. Co.*, 51 I. C. C., 118; *Sunderland Bros. Co.* v. *C., B. & Q. R. R. Co.*, 51 I. C. C., 185. The defendants introduced no evidence, and the complainant confined its showing to the facts as above stated. In that connection complainant's witness testified that no future movement from Norfolk is expected and he sees no necessity for the establishment of the commodity rate.

We find that the rate assailed was unreasonable to the extent that it exceeded 38.9 cents per 100 pounds; that complainant made shipments as described and paid and bore the charges thereon; that it was damaged thereby in the difference between the transportation charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined from the record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, which should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Under the circumstances no order for the future need be entered.

No. 10398.

PIKES PEAK CONSOLIDATED FUEL COMPANY

v.

DIRECTOR GENERAL, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

Submitted April 25, 1919. Decided October 16, 1919.

Rates on lignite coal in carloads from Pikeview, Colo., to points on the Chicago, Rock Island & Pacific Railway in Kansas, Nebraska, Missouri, and Oklahoma, not shown to be unreasonable, but found to be unduly prejudicial to the extent they exceed by more than 10 cents per net ton the rates contemporaneously maintained from the Keystone mine, near Roswell, Colo., to the same destinations.

C. C. Hamlin for complainant.

E. N. Clark and *J. G. McMurry* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

Complainant, a corporation, operates a coal mine at Pikeview, Colo. By its complaint, filed November 14, 1918, as amended, it alleges that defendants' rates on lignite coal in carloads from Pikeview to points in Kansas, Nebraska, Missouri, and Oklahoma on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, are unreasonable and unduly prejudicial as compared with the rates on lignite coal from the Keystone mine, near Roswell, Colo., to the same destinations. Complainant's primary interest is in the rate relationship between the Pikeview mine and the Keystone mine. The petition states that "claims for reparation on shipments affected will be made." No evidence was submitted respecting reparation, however, and that question will not be considered. Rates will be stated in amounts per net ton.

Complainant's mine, at Pikeview, is on the Denver & Rio Grande Railroad, hereinafter called the Rio Grande, about 3.6 miles north of Roswell, the junction point between the Rio Grande and the Rock Island. It is equipped with modern mining machinery, and in 1918 produced 205,834 net tons of coal, between 200 and 300 carloads of which were shipped to stations on the Rock Island in Kansas and Nebraska. A large percentage of the output of the mine is consumed

at Colorado Springs, Colo., about 6 miles south of complainant's mine, and at Cripple Creek, Colo.

Coal from the Pikeview mine destined to points on the Rock Island east of Colorado is delivered to the Rock Island at either Roswell or Colorado Springs. When shipped in trainloads it is usually interchanged at Roswell, but when in less than trainloads, for operating reasons, it is delivered to the Rock Island at Colorado Springs. Most of the coal is moved to the junction point by the local freight trains of the Rio Grande. There is also a triweekly switching service from Colorado Springs in which some of the coal is handled.

No joint rates are in effect from Pikeview to the destinations involved. The lowest combinations make on Roswell. For some time prior to June 25, 1918, the proportional rate from Pikeview to Roswell on coal destined to stations east thereof on the Rock Island was 25 cents; on that date it was increased under General Order No. 28 of the Director General of Railroads to 40 cents; and on December 6, 1918, to 50 cents.

It is stated on behalf of complainant that in marketing its coal at points on the Rock Island in Kansas, Nebraska, Missouri, and Oklahoma, it competes with the Keystone mine, which is located 4.5 miles east of Roswell at the terminus of a branch line operated by the Rock Island. The Keystone mine is well equipped with machinery, and is the largest coal mine in Colorado served by the Rock Island. While a large portion of the coal from the Keystone mine is consumed at Colorado Springs, there is a substantial movement to points east thereof on the Rock Island. Coal from this mine destined to points on the Rock Island is switched from the mine to Roswell, from which point it is billed to destination. The Roswell rate applies from the Keystone mine to the destinations in question.

Both of the mines are in what is commonly known as the Colorado Springs lignite coal field. They produce coal of the same general quality which sells for the same price in Colorado Springs, and in competition in the same interstate markets.

Defendants assert that the combination of local rates is the usual basis on coal from mines in the Colorado Springs coal field for two or more line hauls and that this basis should, therefore, apply from Pikeview to the destinations in question. It is also asserted that the cost of transporting the coal from the Keystone mine to Roswell is much less than from the Pikeview mine, as it is necessary for the Rock Island to maintain a switching crew at Roswell which is not normally kept busy, and the coal from the Keystone mine is handled during time the crew would not otherwise be engaged. The general freight agent of the Rio Grande testified that it had long been the

desire of the Rio Grande to have more favorable rates established from Pikeview to points on the Rock Island, but that the desire of the Rock Island to protect the output of the mines on its line had prevented the establishment of rates lower than the full combination on Roswell. According to the witness for the Rock Island that road has refused to apply the Roswell rate from Pikeview because the Rio Grande would not apply the Roswell rate from the Keystone mine. That a carrier has no right to limit markets on behalf of industries located on its line has been frequently held by the Commission. *Rates from Walsenburg Coal Field*, 26 I. C. C., 85, and cases cited therein.

In support of their contention that the rates from Pikeview should be higher than from the Keystone mine, defendants refer to *Rates from the Walsenburg Coal Field*, *supra*, wherein the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, was permitted to maintain rates on coal in carloads from the Walsenburg coal field in Colorado 10 cents higher than the rates from the Canon City field in Colorado to the same destinations; also to *Northern Coal & Coke Co.* v. *C. & S. Ry. Co.*, 16 I. C. C., 369, wherein we required the carriers to establish through routes and joint rates from Louisville, Colo., in the northern Colorado coal field, about 20 miles northwest of Denver, to points in Kansas, Nebraska, Missouri, Iowa, and Oklahoma on the Rock Island not in excess of 40 cents per ton higher than the rates from Denver to the same destinations.

The Rock Island and Santa Fe maintain from Roswell to points on the Santa Fe east of Colorado joint rates 5 to 10 cents higher than apply from mines on the Santa Fe at Pikeview. The Rock Island in connection with the Missouri Pacific Railway also maintains joint rates from the Keystone mine to points east of Colorado on the Missouri Pacific Railroad, and has published joint rates effective June 6, 1919, from the Carlton mine on the Rio Grande at Pikeview, to points east of Colorado, which to many points are from 10 to 15 cents higher than the Roswell rate.

The Commission should find that the rates assailed are not shown to be unreasonable, but that they are and for the future will be unduly prejudicial to the extent that they exceed or may exceed by more than 10 cents per net ton the rates contemporaneously in effect from the Keystone mine to the same destinations.

DANIELS, *Commissioner:*

The above, with certain minor changes, is the report of the examiner as served upon the parties. No exceptions were filed thereto. Examination of the record indicates that the facts are correctly

stated, and upon consideration of those facts we are of opinion that the recommendations of the examiner as to the disposition of the case should be followed. We accordingly find that the rates complained of are not shown to be unreasonable, but that the present rates are, and any rates which may exceed by more than 10 cents per net ton the rates contemporaneously maintained from the Keystone mine to the same destinations will for the future be, unduly prejudicial. An appropriate order will be entered.

No. 10411.

UNITED SHOE MACHINERY CORPORATION
v.
DIRECTOR GENERAL AND PENNSYLVANIA RAILROAD COMPANY.

Submitted June 2, 1919. Decided October 21, 1919.

Upon complaint that domestic demurrage charges were illegally assessed at Baltimore, Md., on two cars of tack plate, shipped from Vandergrift, Pa., to Baltimore, for export, but subsequently reconsigned to New York and exported from that port; *Held*, That the domestic demurrage charges and not the export storage charges were legally applicable. Charges not shown to have been unreasonable.

Walter Bates Farr and *Mason Manghum* for complainant.
Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

The principal issue in this proceeding is whether domestic demurrage rates were legally applicable at Baltimore, Md., on two cars of tack plate shipped to that point for export from Vandergrift, Pa., but subsequently reconsigned to New York, N. Y., and thence exported.

Complainant is engaged in manufacturing and dealing in shoe machinery with its principal office at Boston, Mass. The cars in question, Intercolonial 62227 and Intercolonial 49176, left Vandergrift on December 9, 1916, and December 11, 1916, respectively, consigned on domestic bills of lading to "Caldwell & Co., % Templeman Steamship Company, B. & O. R. R. Pier," Baltimore, Md., notify L. Pfeiff, 30 Church street, New York, N. Y. Caldwell & Company was complainant's forwarding agent. The Pennsylvania Railroad Company will be referred to herein as defendant.

The shipment was originally intended for the steamship *Glancastle*, scheduled to sail from Baltimore the latter part of December. After the cars left Vandergrift and while en route Caldwell & Company learned that this steamship had been requisitioned by the British government. They then endeavored to have the cars diverted to Philadelphia, Pa., for export by another shipping company, but their instructions reached defendant after the cars had passed

stated, and upon consideration of the recommendations of the exa case should be followed. We a plained of are not shown to be rates are, and any rates which per net ton the rates contemp stone mine to the same de prejudicial. An appropriate

period of not exceeding fifteen (15) days from the date of
of such date of arrival; thereafter the storage charges will

(10) days or fraction thereof beyond the period of free
handling in an out * * * 1 cent per 100 pounds.
ding ten (10) days or fraction thereof * * * ½ cent per

computed up to the day the vessel to which shipment is deliv-
ng aboard merchandise cargo.

of its contention that the export storage charges ap-
timore, complainant relies on the proposition that the
riff provides for the application of the export storage
Freight * * * for export to foreign ports * * *
exported * * *." It is urged that the words "actually
do not limit the exportation from the port of Baltimore,
the export storage charges named apply if the shipment is
ported from any port.

ts reply that Pennsylvania Railroad tariff G. O., I. C. C.
y provides on its title page that it is applicable only at
Baltimore, and that the words "actually exported" must
ed as a limitation that the shipment must be exported from
of Baltimore. Another point relied upon in support of
truction is that the provision in the rule, namely, "Storage
mputed up to the day the vessel to which shipment is de-
begins taking aboard merchandise cargo," would be ignored
omplainant's interpretation, as storage charges could not be
while the shipment was en route from Baltimore to the
actual exportation. In other words it is the defendants'
that this last provision clearly contemplates that the shipment
be loaded aboard a vessel for export at Baltimore. Complain-
figuring the charges that should have applied under the ex-
storage tariff included the period between the date the ship-
left Baltimore and the day it was loaded on the vessel at New
At the hearing its witness admitted that it was not proper
ess storage charges on a shipment while in transit, and asked
to revise his figures so as to exclude the period after the cars
Baltimore.

o apply the charges as now suggested by complainant would
ke ineffective the provision of the tariff that the storage charges
to be computed up to the day the vessel to which shipment is
livered begins taking aboard merchandise cargo and would also
gnore the limitations of the tariff on its title page. In order to de-
ermine if the export rule is applicable on the shipment in question
the Commission can not consider only the part of the rule that is
favorable to complainant's contention, and ignore other provisions

of the tariff that make clear its application. The tariff must be construed in its entirety considering both the limitations on its title page and the rules contained therein. When so considered it is reasonably clear that the export rule and storage charges named therein apply only on shipments actually exported from the port of Baltimore.

There is an allegation in the complaint that the charges assessed were unreasonable, but no evidence has been introduced in support thereof.

We find that the demurrage charges were legally assessed and are not shown to have been unreasonable.

DANIELS, *Commissioner:*

The above, except that we have eliminated the proposed finding of overcharge on Intercolonial car 62227, hereinafter explained, and made certain unimportant editorial changes, is the report of the examiner served on the parties. Intercolonial car 62227 left point of origin on December 9 and arrived at Baltimore on December 13. The tariff in effect on the date the car left point of origin provided a demurrage charge of $1 per day after the expiration of the free time. On December 11 increased demurrage charges became effective and were applied to this shipment. Following *Conference Ruling 473*, which provided that demurrage in transit would be determined by the tariff in effect at the time the transportation began, the examiner proposed to find that this shipment had been overcharged. We have, however, recently adopted a new conference ruling as follows:

DEMURRAGE AND STORAGE RULES.—Upon inquiry and to remove the confusion that exists among carriers and shippers, *Held*, That off-track storage not in transit, track storage, and demurrage are controlled by the tariffs in effect contemporaneously with the accrual of these services, and therefore are subject to such changes as lawfully may be made in the applicable tariffs during the period of accrual; that off-track storage in transit is controlled by the tariffs in effect upon the date of shipment. (Rescinding Conference Ruling 405 and 473.)

Under the new ruling the increased demurrage charges were properly applicable and we have accordingly eliminated the examiner's proposed finding of overcharge. We have examined the exceptions filed by complainant, but we are of opinion that the conclusions of the examiner, except as indicated, are correct and we adopt the report, as modified, as our own. An order dismissing the complaint will be entered.

No. 9296.[1]

CORNELL WOOD PRODUCTS COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted February 8, 1919. Decided October 7, 1919.

Carload rates and ratings on "wall board" found to have been legally applicable on "Cornell wall board" and to have been unreasonable and unduly prejudicial to the extent that they exceeded the carload rates legally applicable on wood-pulp board. Reparation awarded. Original report in No. 9296, 49 I. C. C., 91.

Butler, Lamb, Foster & Pope and *William E. Lamb* for complainant.

F. E. Andrews, D. P. Connell, and *L. P. Day* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant in these cases seeks reparation on interstate carload shipments of Cornell wood board or wall board from Cornell, Wis., to various destinations, upon the ground that the applicable rates were those named in the tariffs to cover wood-pulp board, or, in the alternative, that if the rates on "wall board" were applicable they were unjust, unreasonable, and unduly discriminatory to the extent that they exceeded the rates on wood-pulp board. Complaints in Nos. 9760 and 10022 were filed to cover additional shipments made subsequently to the filing of No. 9296 and bring in the additional defendants participating in the transportation. In our former report in No. 9296, 49 I. C. C., 91, we held that the rates on wall board were applicable to the shipments made by complainant and were not shown to have been unreasonable, and that evidence of damage sufficient to support an award of reparation upon a finding of undue prejudice had not been introduced. The complaint was dismissed. Complainant filed a petition for rehearing, which was granted, and Nos. 9760 and 10022 were thereupon consolidated with No. 9296 for hearing and disposition.

[1] This report also embraces No. 9760, Same *v.* Atchison, Topeka & Santa Fe Railway Company et al. and No. 10022, Same *v.* Ann Arbor Railroad Company et al.

The commodity shipped was a multiple-ply pulpboard, used principally as a wall covering, although put to several other uses. We adhere to our former conclusion that—

> While wall board is undoubtedly a variety of wood-pulp board, we are of opinion that when it is specifically rated that rate, and not the rate on wood-pulp board, is legally applicable.

The allegation that the rates charged were unreasonable and unduly prejudicial to the extent that they exceeded the rates on wood-pulp board is supported by evidence intended to show that the elements of value, liability to damage, loading, and facility of handling favor rates on wall board at least no higher than on other wood-pulp boards, and that the process of manufacture is shorter and cheaper than that used in the manufacture of some other wood-pulp boards. In *Wall Board Rating*, 43 I. C. C., 189, 190, we said:

> The value of wall board ranges from $36 to $60 per ton, the value of the product manufactured by the Cornell Wood Products Company, the principal protestant, being $57 a ton. The normal value of wood-pulp board is about $40 per ton. * * * The present value of ice cream pail board is $90 per ton; the normal value is from $50 to $60 per ton. The present values are abnormal, due to scant importations of chemical fiber. Some low-grade wall boards are less valuable than certain grades of wood-pulp board.

The record indicates that the values of all kinds of wood-pulp boards have greatly increased since that report was written and that at present the market price of wall board is considerably less than that of most other wood-pulp boards. Complainant's wall board is shipped packed flat in packages or bundles, with the corners and edges protected, and is less liable to damage than wood-pulp boards which are shipped in rolls. Wall boards load more heavily than the wood-pulp boards which are shipped in rolls, because practically all of the space in the car can be utilized. There is never any difficulty in loading wall board above the minimum carload weight of 40,000 pounds, while only one tier of some wood-pulp boards shipped in large rolls can be loaded into a car, leaving considerable space unoccupied. Wood-pulp boards which are shipped in the larger rolls are also more difficult to handle than the wall board in flat packages.

Defendants contend that the wall board is a more finished product, requiring a further process of manufacture than single-ply wood-pulp board, and reasonably might take higher rates.

In our former report we referred to the distinction between wall board and wood-pulp board recognized in *Wall Board Rating*, *supra*. Upon being advised by the inspection bureau that the wood-pulp-board rates were not properly applicable on the wall board shipped by complainant, the defendant carriers, upon complainant's request, immediately took steps to establish the same rates upon wall board

as applied upon other wood-pulp boards; and these rates were put in by the defendants voluntarily, except to central freight association territory, to which joint commodity rates were applicable from Cornell on wood-pulp board. Since the date of our report in *Wall Board Rating*, *supra*, rates on wall board in all of the territories to which complainants ship have been established on the same basis as applies on wood-pulp board.

Upon consideration of the entire record now before us we are of the opinion and find that the rates assailed were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously maintained upon wood-pulp board; that complainant made shipments as described and paid and bore the charges thereon; that it was damaged thereby in the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10331.

WITTENBERG-KING COMPANY

v.

DIRECTOR GENERAL, GREAT NORTHERN RAILWAY COMPANY, ET AL.

Submitted May 11, 1919. Decided October 16, 1919.

Rate of 40 cents per 100 pounds on cull apples, in carloads, from Peshastin, Cashmere, Wenatchee, and Monitor, Wash., to Portland, Oreg., found unreasonable to the extent that it exceeded 25 cents. Reparation awarded.

Ralph A. Coan, for complainant.

John F. Finerty and *A. C. Spencer* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint, seasonably filed, complainant, a corporation engaged in evaporating fruits and vegetables at Portland, Oreg., alleges that the rate of 40 cents per 100 pounds exacted for the transportation of 16 carloads of cull apples, in bulk, shipped in November, 1917, from Peshastin, Cashmere, Wenatchee, and Monitor, Wash., to Portland, was unreasonable to the extent that it exceeded the rate of 25 cents established December 10, 1917. Reparation only is asked.

The shipments were handled in box cars at shipper's risk of freezing or overheating, and weighed from 35,940 pounds to 97,000 pounds each. They moved over the line of the Great Northern Railway, hereinafter called defendant, from points of origin to destination, 326.8 miles to 346 miles. After sorting the apples at Portland complainant used about one-half for evaporating, and sold the balance to manufacturers of cider and vinegar. Charges were collected at a commodity rate of 40 cents, contemporaneously applicable to graded and packed apples, in boxes. Defendant contends that fifth-class rates ranging from 48 cents to 50 cents on apples without limitation as to quality were legally applicable, but in view of our conclusions herein it will be unnecessary to determine whether or not the shipments were undercharged.

Complainant pointed out that the value of graded apples was somewhat in excess of $60 per ton, while that of cull apples was only

from $8 to $10 per ton. It cited rates of from 15 cents to 22½ cents applicable on cull apples over routes of other carriers between numerous points in Washington, Oregon, and Idaho for distances from 157.1 miles to 318.8 miles; and rates of 30 cents from Boise, Idaho, to The Dalles, Wash., 407.2 miles, and from North Yakima, Wash., to Boise, 446 miles. Complainant compared the average charge of $245 per car, including war taxes, with the minimum charge of $69.52 per car on potatoes from Wenatchee to Portland. It stated that the empty-car movement westbound was favorable to the transportation involved, and emphasized the fact that this was low-grade traffic and loaded heavily.

Defendants stressed the fact that there was no movement prior to these shipments and none since the voluntary reduction of the rate to 25 cents. Complainant explained that this was due to the fact that since the period here in question they had been operating on government vegetable contracts to the exclusion of the apple business but that they expected to get apples from the Wenatchee district this year. Defendants contend that the classification rating was reasonable, and that there was no reason for the establishment of a commodity rate on cull apples. There would appear to be no justification, however, for the application of a class rate on these cull apples, in bulk, while a lower commodity rate applied on graded apples, in boxes.

We find that the rate applicable to these shipments was unreasonable to the extent that it exceeded 25 cents; that complainant made the shipments and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

No. 9531.

ROCKFORD PAPER BOX BOARD COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted December 2, 1918. Decided October 14, 1919.

Charges of 24.5 cents and 20 cents per 100 pounds on rock board, in carloads, from Rockford, Ill., to Kansas City, Mo., and Minneapolis, Minn., respectively, found upon rehearing, to have been unreasonable to the extent that they exceeded 16 cents and 13.5 cents. Reparation awarded. Original report, 49 I. C. C., 586.

C. S. Bather for complainant.
J. N. Davis for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Following the issuance of our former report in this proceeding, 49 I. C. C., 586, complainant's petition for rehearing was granted and a further hearing had, at which additional evidence was introduced by complainant. Rates herein stated are in cents per 100 pounds.

In our original report, *supra*, we said that with respect to three shipments to Kansas City in August, November, and December, 1914, the claims must be held to have been abandoned. As there stated, claim with respect to these shipments was seasonably filed by complainant for the purpose of tolling the statute of limitations. Like action was taken by defendant Chicago, Milwaukee & St. Paul Railway Company but it never filed the special docket application. In the correspondence that passed with regard to the presentation of these claims complainant was advised that the statute had been tolled and that, when filed, the application would have prompt consideration. Complainant was thereby lulled into belief that its rights were protected, and, under the circumstances of this particular case, we now hold that the claims were not abandoned, that there is no evidence of such intention on the part of complainant, and that these shipments are not barred.

Charges were collected on the above-mentioned three shipments at the fifth-class rate of 24.5 cents applicable from the Peoria, Ill., rate

group, and on the fourth shipment to Kansas City charges were based on the actual weight, 35,600 pounds, and the fifth-class rate of 27 cents applicable from the Chicago, Ill., rate group. In our former report we found that the last of these shipments had been undercharged, as a minimum weight of 36,000 pounds was legally applicable. Complainant now shows that wall board is one of the commodities on which Rockford takes the peoria rate-group basis on shipments to Kansas City. Rockford takes the Chicago basis on all classes and commodities, excepting certain commodities listed in the tariff, including paper (not otherwise described or limited), on which Rockford is given the Peoria basis. The tariff is governed by the western classification, in which wall board was and is classified under the heading "paper." It thus appears that the fifth-class rate of 24.5 cents was properly applied on the three shipments to Kansas City, and that the fourth was overcharged $7.92.

In our former report we said:

> No substantial evidence was introduced to show that the rates legally applicable were intrinsically unreasonable, the evidence being almost wholly confined to comparisons of the rates on wall board with lower rates applicable to the other articles above mentioned. Similar evidence was considered in *Wall Board Rating, supra*, in which we found that the rates on wall board were unjustly discriminatory to the extent that they exceeded the rates contemporaneously maintained on wood-pulp board, and denied reparation.

In *Wall Board Rating*, 43 I. C. C., 189, our finding was:

> We find that defendants are practicing an unjust discrimination by imposing a higher charge for the transportation of beaver board than for other wood-pulp boards, and that for the future the rates on beaver board in central freight association territory should not exceed the rates contemporaneously maintained on other wood-pulp boards.

At the same time we found that increased rates which would result from the proposed elimination of wall board from the list of commodities taking certain rates had not been justified, and pointed out that rock board would, under the proposed rates, take a higher rating when shipped for use as a wall covering than when shipped for some of the other uses to which it is adapted and put.

In the instant case the gist of the complaint is that the rates charged were unreasonable. Prior to June 30, 1913, when the fifth-class rating on wall board was established in the western classification, the rock board which complainant manufactures was shipped as chip board and the commodity rates on chip board were applied. As soon as the carriers determined to apply to rock board the fifth-class rates applicable on wall board, complainant requested a reduction to the same basis as wood-pulp board, and this basis was established by the carriers on April 1, 1915, to Minneapolis, 13.5 cents, and on

February 1, 1916, to Kansas City, 16 cents. The shipments on which reparation is sought moved while the negotiations were pending. On a similar shipment from Rockford to Minneapolis, over another route, reparation was authorized on the informal docket on the basis of the commodity rate on wall board, established April 1, 1915. In addition to the comparisons of the rates on wall board with those applying on analogous articles, complainant introduced evidence showing that the elements of weight, density, liability to damage, and value favor a lower rate on rock board than on most of those commodities.

The rates applicable on rock board from Rockford prior to June 30, 1913, were commodity rates of 16 cents to Kansas City and 10 cents to Minneapolis, and the establishment on that date of the rating of fifth class on wall board in the western classification resulted in the rates on rock board being increased to 24.5 cents to Kansas City and 20 cents to Minneapolis. No justification was offered by defendants for the rates so increased.

Upon further consideration, we find that the rates charged were unreasonable to the extent that they exceeded the commodity rates of 16 cents and 13.5 cents to Kansas City and Minneapolis, respectively, subsequently established; that complainant made shipments as described and paid and bore the charges thereon, except upon one shipment to Minneapolis in Illinois Central car No. 36900, on which charges were paid and borne by a stranger to the record; that it was damaged thereby in the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

DANIELS, *Commissioner*, dissents with reference to award of reparation upon three shipments to Kansas City in August, November, and December, 1914.

No. 10016.

R. MOHR & SONS

v.

NEW ENGLAND STEAMSHIP COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 26, 1919. Decided February 11, 1920.

Rates on smoothed zinc plate, in carloads and less than carloads, from Plymouth and Framingham, Mass., to Pacific coast points found unreasonable to the extent indicated in the report. Reparation awarded.

Gittings & Wade for complainant.

T. J. Norton, E. W. Camp, Fred H. Wood, C. W. Durbrow, Geo. D. Squires, and *Elmer Westlake* for defendants.

CORRECTED REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint and supplemental complaint filed November 13, 1917, and September 30, 1918, respectively, complainant, a corporation engaged in the photo-engravers' supply business at San Francisco, Calif., alleges that the rates charged by the defendants on carload and less-than-carload shipments of smoothed zinc plate from Plymouth and Framingham, Mass., to San Francisco and Los Angeles, Calif., and Portland, Oreg., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and the establishment of maximum rates are sought. Two hearings have been had, prior to the second of which the Director General of Railroads was made a defendant. Rates will be stated in amounts per 100 pounds.

The shipments moved over the lines of various defendants. Between January 3, 1916, and June 20, 1917, 31 less-than-carload lots moved from Plymouth to the destinations named, and on May 26, 1917, a carload shipment was made from Framingham to San Francisco. As indicated at the second hearing various other shipments were made after June 20, 1917. The second-class any-quantity rate of $3.20, increased to $4 on June 25, 1918, and governed by the western classification, was applicable to copper and zinc engravers' plates. These rates apparently were charged on all shipments, excepting two on which rates of $2.65 and $3.70 were assessed, the authority for which does not appear.

As used by complainant, this zinc, known as 16-gauge, is ordinarily in sheets 15 by 36 inches. It is polished on one side and is usually shipped wrapped in paper and packed in heavily cleated boxes, strapped with iron bands, each box containing about 500 pounds. It is used almost entirely to make the plates for half-tone pictures and line cuts by an acid-etching process, commonly termed photo-engraving. The complainant contends that the rate on copper or zinc engravers' plates did not apply on its shipments, because the etching or photo-engraving process in connection with which zinc plates are used is not engraving in the strict sense of the word; that engraving is done by hand, ordinarily on copper plates; and that zinc plates are never used for that purpose. It is our opinion that the zinc plates in question come within the tariff description of copper or zinc engravers' plates and that the second-class rate was legally applicable.

The zinc shipped differs from ordinary plate or sheet zinc as it comes from the mill only in that it is polished on one side, in order to secure the perfectly flat and smooth surface essential to its use for the purpose mentioned. The price of sheet zinc at the factory and as it comes from the mill was stated at the time of the first hearing, April 26, 1918, to be 19 cents per pound, while the price of that which is polished on one side was 20 cents per pound, the polishing process adding 1 cent per pound to the value. At the time of the second hearing, March 8, 1919, the prices were 11 and 13 cents, respectively. A fourth-class less-than-carload rate of $2.25, increased on June 25, 1918, to $2.815, and a carload commodity rate of $1.25, increased on March 15, 1918, to $1.70 and on June 25, 1918, to $2.125, were applicable on plate or sheet zinc from the points of origin to Pacific coast terminals, including Portland and San Francisco. Prior to March 15, 1918, the carload rate on plate or sheet zinc to Los Angeles was $1.36, based on the back-haul combination, consisting of a commodity rate of $1.25 to San Pedro and a second-class rate of 11 cents back. The increased rates of $1.70 and $2.125, referred to, were made applicable to Los Angeles as well as to Portland and San Francisco. It was asserted that complainant was unable to meet the competition of local manufacturers, who could obtain the unpolished zinc from the points of origin at the rates mentioned and polish it at Pacific coast points.

Complainant cited by way of comparison a less-than-carload commodity rate of $2, increased on March 15, 1918, to $2.50, and on June 25, 1918, to $3.125, and a carload commodity rate of $1.50, increased on March 15, 1918, to $1.95, and on June 25, 1918, to $2.44, applicable to Pacific coast terminals on brass, bronze, or copper goods, including bars, plates, sheets, and manufactured articles. Complainant also

cited a carload rate of $1.65, increased on March 15, 1918, to $2.10, and on June 25, 1918, to $2.625, and a less-than-carload rate of $3, increased to $3.75 on March 15, 1918, and to $4.69 on June 25, 1918, applicable from the points of origin to Pacific coast terminals on plate and sheet aluminum, which commodity is much lighter and more bulky than zinc and worth about 85 cents a pound; also a rate of $1, increased March 15, 1918, to $1.35, and on June 25, 1918, to $1.69, applicable on planished sheet iron or steel or polished sheet steel, in carloads. It was also testified that copper engravers' plates, carried in the same classification item with the zinc plates, were worth about 33 cents a pound at the mills.

Defendants assert that the commodity in question was properly classified. They make no rate comparisons, practically the entire defense being predicated on the contention that the rates on plate or sheet zinc and on the other articles cited by complainant applied in connection with a considerable volume of movement, and that these rates had been forced to an unreasonably low level by water competition, which conditions were not encountered in connection with the transportation of the zinc plates here in question.

We find that the any-quantity rate of $3.20 in effect prior to June 25, 1918, was unreasonable as applied to carload and less-than-carload shipments, respectively, to the extent that it exceeded by more than 25 cents per 100 pounds the carload and less-than-carload rates contemporaneously maintained on similar shipments of plate or sheet zinc; and that the rate legally applicable on this traffic on and since June 25, 1918, was, is, and for the future will be unreasonable to the extent of its excess over $2.44 per 100 pounds on carloads and $3.125 per 100 pounds on less than carloads. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 10346.[1]

DAVID KAUFMAN & SONS COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY, DIRECTOR GENERAL, ET AL.

Submitted April 9, 1919. Decided October 16, 1919.

Rates charged on scrap iron, in carloads, from Bayway, N. J., to Conshohocken, Pa., reconsigned to Coatesville, Pa., and from Bayway, N. J., to Williamsport, Pa., reconsigned to Newberry, Pa., then to Franklin, Pa., found not to have been unreasonable. Complaints dismissed.

Louis Kaufman for complainant.

A. H. Elder for Director General of Railroads and other defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the purchase and sale of scrap iron and metals with its office at Elizabethport, N. J. By complaints seasonably filed it alleges that the rates assessed for the transportation of 15 carloads of scrap iron in December, 1916, from Bayway, N. J., to Conshohocken, Pa., and reconsigned to Coatesville, Pa., and 6 carloads of scrap iron in April, 1917, from Bayway to Williamsport, Pa., reconsigned to Franklin, Pa., were unreasonable. Reasonable rates and reconsignment rules for the future and reparation were sought. At the hearing the prayer for the future was abandoned. Rates will be stated in cents per gross ton unless otherwise specified.

The shipments involved in the main complaint were originally consigned to complainant's order, notify Dreyfus & Son, a brokerage house at Conshohocken, and were intended for delivery to Alan Wood Iron & Steel Company at that point.

They arrived at Conshohocken, a point on the Philadelphia & Reading Railway, hereinafter referred to as defendant, between December 14, 1916, and January 1, 1917. According to defendant's records they were placed on the interchange tracks of the Alan

[1] This report embraces No. 10346 (Sub-No. 1), Same *v.* Central Railroad Company of New Jersey, Director General, et al.

Wood Iron & Steel Company between December 20, 1916, and January 4, 1917, where that company inspected and refused them. They were finally reconsigned to the Worth Brothers Company, now the Midvale Steel & Ordnance Company, Coatesville, on orders received by defendant four to nine days after placement. Charges were collected on the 15 cars based on the rate of $1.48 from Bayway to Conshohocken and a local of 84 cents beyond, together with the demurrage charges that accrued on each car at Conshohocken. The complaint alleges that the freight charges were unreasonable in so far as they exceeded those that would have accrued at the joint rate of $1.58 from Bayway to Coatesville, with an additional charge for the reconsignment service. No complaint is made against the demurrage charges.

The defendant maintains that 3 of the cars were partially unloaded by the Alan Wood Iron & Steel Company and that these were reshipped to Coatesville billed at the reduced weights. The complainant denies this and insists that the ultimate consignee paid for the scrap iron in accordance with the weights of the original shipments. Since the hearing defendants have furnished a statement which shows that the cars were weighed by the Alan Wood Iron & Steel Company and 3 of them were partially unloaded by that company and reshipped at the reduced weights.

The shipments in Sub-No. 1 were consigned to complainant's order at Williamsport, notify E. B. Leaf & Company, Philadelphia. Three cars reached destination on April 6, 1917, and the other 3 on April 9, 1917. On April 10, 1917, E. B. Leaf & Company ordered delivery of the cars at Newberry, where they arrived April 12, 1917. After inspection acceptance was refused by the concern for which the shipments were intended, and on April 19, 1917, seven days after their arrival at Newberry, the cars were further reconsigned to Franklin, Pa. In addition to certain demurrage charges, not attacked, freight charges were collected on the basis of the rate of $1.68 from Bayway to Williamsport, $5.25 per car from Williamsport to Newberry, Pa., and $2.46 per ton from Newberry to Franklin. The complaint alleges that these freight charges were unreasonable in so far as they exceeded those which would have accrued on the basis of the joint rate of $2.76 from Bayway to Franklin plus a reconsignment charge.

The complainant contends that the movement from Williamsport to Newberry was not a line haul but merely a switching service for which not more than $2 per car should have been charged. Newberry is approximately 2.5 miles from Williamsport, and is not within the switching limits of that city. The shipments consisted of old rails, but were billed to Williamsport as scrap iron, which took the same

rate as old rails. From Williamsport to Newberry they were billed as old rails, the rate on which was $5.25 per car and lower than that contemporaneously in effect on scrap iron. The through rate from Bayway to Newberry was $4.52 per ton.

The tariff of the Philadelphia & Reading Railway, item No. 14, ICC–J–No. 5838, did not provide for the application of through rates but provided for the application of the rate to first destination plus a distance scale of rates if lower than the contemporaneous local rates on shipments reconsigned from and to points on that line. Franklin is not on the Philadelphia & Reading Railway. Conshohocken, Coatesville, Williamsport, and Newberry are on that line, but as the rates from Conshohocken to Coatesville and from Williamsport to Newberry under the reconsignment distance scale were greater than the contemporaneous local rates, the latter were applied.

In *Dietz Lumber Co.* v. *A., T. & S. F. Ry. Co.*, 22 I. C. C., 75, a tariff rule prohibiting reconsignment at the through rate after the expiration of 48 hours from time of arrival at destination was found not to be unreasonable. A tariff rule limiting reconsignment at the through rate to a period of 72 hours after the arrival of shipments at the first destination was considered in *Cedar Hill Coal & Coke Co.* v. *C. & S. Ry. Co.*, 16 I. C. C., 387, *Sunnyside Coal Mining Co.* v. *D. & R. G. R. R. Co.*, 16 I. C. C., 558, and *Colorado Fuel Co.* v. *C. & S. Ry. Co.*, 38 I. C. C., 690, and was not condemned. With respect to the shipments in question more than 72 hours expired in each instance save as to three of the cars in Sub–No. 1 reconsigned from Williamsport to Newberry. As to the reconsignment of these three cars it will be noted that the through rate of $4.52 per ton to Newberry exceeded the legally applicable local rates of $1.68 to Williamsport and $5.25 per car from Williamsport to Newberry. As to those cars of the Conshohocken shipments which were partially unloaded, see also *Doran & Co.* v. *N. C. & St. L. Ry.*, 33 I. C. C., 523, 533, wherein it was held as one of the conditions precedent to the reconsignment privilege that the contents of the car should remain unchanged.

Upon all the facts of record we are of opinion and find that the shipments were not entitled to the application of the joint rates from point of origin to final destinations, and the rates charged are found not to have been unreasonable or otherwise unlawful.

The complaints will be dismissed.

No. 10462.

MATTHIESSEN & HEGELER ZINC COMPANY

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted June 23, 1919. Decided October 16, 1919.

Fifth-class rates on hard corrugated asbestos roofing and siding from Ambler, Pa., to La Salle, Ill., not found to have been or to be unreasonable or otherwise unlawful. Complaint dismissed.

Nuel D. Belnap, *John S. Burchmore*, and *Luther M. Walter* for complainant.

J. N. Davis, *W. L. Kinter*, and *Kenneth F. Burgess* for defendants; *D. T. Lawrence* for official classification lines; and *H. C. Stauffer* for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed February 15, 1919, as amended, complainant, a corporation engaged in manufacturing at La Salle, Ill., alleges that the fifth-class rates charged on 18 carloads of hard corrugated asbestos roofing shipped from Ambler, Pa., to La Salle during the period from January 1, 1917, to June 25, 1918, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the commodity rates contemporaneously applicable to composition roofing from and to the same points. Reparation and the establishment of reasonable rates are sought. Rates will be stated in cents per 100 pounds.

The roofing shipped was made of Portland or hydraulic cement and asbestos fiber rolled into thin layers and placed one upon another to a thickness of three-sixteenths of an inch, then cut into sheets while wet and pressed between corrugated plates into slabs about 27 inches wide and from 4 to 10 feet long. The corrugated sheets or slabs weigh about 3 pounds per square foot and become hard and rigid. Those shipped to complainant were fastened to a framework of steel and wire and formed the sides and roofs of its buildings at La Salle.

The shipments averaged 49,035 pounds and were delivered between February 14, 1917, and July 15, 1918. Evidently all were shipped prior to June 25, 1918. In addition to a war tax on certain of the shipments, freight charges were collected at the fifth-class rates, applicable under the official classification, of 32.7 cents on shipments prior to July 16, 1917, and 37.5 cents on subsequent shipments. Contemporaneously the rates on composition roofing, to the basis of which reparation is sought, were 21.1 cents and 25 cents, respectively.

The fifth-class rating was first made applicable to "roofing, asbestos, and cement combined" January 1, 1907. On January 1, 1914, the description was changed to read, "asbestos, roofing, or sheathing, hard corrugated." Building and roofing paper, composition roofing and asbestos lumber are also rated fifth class. Asbestos lumber is made of cement and asbestos fibers pressed between flat, instead of corrugated, plates. The simplest form of composition roofing is made of woolen rag felt or asbestos paper, saturated with tar, pitch, or asphalt. It may also be coated on one or both sides with the same material with which it is saturated, and so used; or further coated with sand, pebbles, crushed slate, or talc; or it may be lined with cloth.

For complainant it is testified that asbestos slabs are devoted to the same uses and purposes as composition roofing; that the corrugated sheets load better than roofing in rolls, because they fit into each other without loss of car space; that they are less susceptible to loss and damage, because they are durable, fireproof, and not affected by acid fumes; and that their value does not exceed the range of values for composition and prepared roofing given in *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84. Ambler is only 17 miles from Philadelphia, Pa. Complainant cited rates from Philadelphia to La Salle of 20 cents on wood pulp and board and mineral filler, 21.1 cents on cement, 22 cents on feldspar, 23.4 cents on firestone, 24 cents on plaster board, 24.6 cents on building tile, and 24.6 cents on certain fireproofings; also a rate of 21.1 cents on composition roofing from Ambler to La Salle.

Defendants point out that composition roofing is so flexible that it must be laid on a surface of wood or other material and can not be used on a framework only. They contend that the principal competition of the commodity here involved is with corrugated sheet iron, painted, galvanized or coated with asphalt or asbestos paper. Corrugated iron forms a strong siding or roofing which can be applied directly to the rafters or studding of a building. It is said that iron roofing generally moves at fifth-class rates. Defendants state that the value of composition roofing is from 1.7 cents to 4.6 cents per pound; of corrugated galvanized iron roofing, from 5.75 to 6 cents;

of corrugated asbestos roofing and siding from 6 to 6.4 cents; of iron roofing coated with asbestos, about 10 cents; of cloth-lined composition roofing, 18.1 to 19.2 cents, and of waterproofed cotton-duck roofing, 29 cents. They contend that as practically all of these values were obtained from catalogues their relation is approximately correct, although complainant testified that it paid from about 3.3 cents to 4.3 cents per pound for the shipments in question. The exhibits indicate that the value of the shipments per square foot greatly exceeded that of composition roofing, even including that which is cloth lined. Cloth-lined composition roofing is rated fourth class and waterproofed cotton-duck roofing is rated second class. It was stated by defendants that composition roofing has moved at low rates, because of its association with paper; that both paper and prepared roofing are produced throughout a large territory, resulting in strong competition between originating carriers; but that, so far as they know, the roofing and siding here involved is produced only at Ambler, and the entire movement from Ambler to points in the United States and Cuba, averaging about eight carloads per month, or upwards, is at fifth-class rates. In *Building and Roofing Paper and Paper Board Rates*, *supra*, we prescribed rates on composition roofing which, with certain exceptions, should not exceed 90 per cent of the contemporaneous sixth-class rates. The same rates were prescribed for strawboard, wall board, building and roofing paper, asphalt shingles, and other similar commodities, but corrugated asbestos slabs were not involved in that proceeding.

We do not find that the rates assailed were or are unreasonable or otherwise unlawful, and an order dismissing the complaint will be entered.

No. 10263.

NEW BEDFORD BOARD OF COMMERCE

v.

DIRECTOR GENERAL AND NEW ENGLAND STEAMSHIP COMPANY.

Submitted June 5, 1919. Decided October 16, 1919.

Rate on eyelets from New Bedford, Mass., to pier No. 40, North River, New York, N. Y., not found unreasonable. Complaint dismissed.

Mason Manghum for complainant.

F. A. Farnham for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint seasonably filed on behalf of J. C. Rhodes & Company, a corporation manufacturing eyelets at New Bedford, Mass., and hereinafter referred to as complainant, it is alleged that the rate charged on eyelets, in barrels or boxes, less than carload, shipped from New Bedford to pier No. 40, North River, New York, N. Y., via the line of the New England Steamship Company, hereinafter called the defendant, on and after May 25, 1917, was unreasonable. Complainant asks for reparation and a reasonable rate for the future.

In *Steamer Lines on Long Island Sound*, 50 I. C. C., 634, decided July 10, 1918, we granted an extension of time under section 5 of the act to regulate commerce as amended by the Panama Canal act within which the New York, New Haven & Hartford Railroad Company was authorized to continue the operation of the New England Steamship Company. The rates in this report are in cents per 100 pounds, and where shown as in effect prior to May 6, 1918, are taken from the record, as they were not on file with us.

Complainant manufactures brass eyelets in various forms and finishes and ships them throughout the United States, and to New York and Boston, Mass., for export, 80 per cent or more of the movement being via all-rail routes. For a number of years the commodity

rate on eyelets, in less than carloads, from New Bedford to New York via defendant's line was 8 cents. On December 28, 1914, this rate was canceled, leaving the class rates applicable. On January 20, 1916, a commodity rate of 12 cents was established which was increased on June 8, 1916, to 13 cents and on April 16, 1918, to 15 cents. On May 6, 1918, the commodity rate was canceled and the third-class rate of 25.5 became effective. On June 25, 1918, this rate was increased to 32 cents under General Order No. 28 of the Director General of Railroads.

Complainant alleges that the rate in effect prior to May 6, 1918, was unreasonable to the extent that it exceeded 12 cents, and that the 32-cent rate established on June 25, 1918, is unreasonable to the extent that it exceeds 15 cents. The port-to-port rates in effect prior to those filed by the Director General were not subject to our jurisdiction.

Complainant contrasts the 32-cent rate on eyelets, weighing on an average 46 pounds per cubic foot and valued at $1.10 per pound, with a 19-cent commodity rate on yarn, cotton piece goods, and blankets, weighing from 5 to 18 pounds per cubic foot and valued at from 90 cents to $1.50 per pound, which, it urges, are less substantially packed and more susceptible to damage than eyelets. It states that for years the rates on all these commodities have been maintained on an approximate parity, and that owing to their density the revenue to the carriers per unit of volume on the eyelets was greater than on the other commodities.

Complainant also compares the rates assailed with what is said to be a commodity rate of 20 cents on shoe tacks and shoe-string nails from New Bedford to New York over defendant's line, which commodities, although much cheaper than eyelets, are more liable to damage. The tariffs on file with us do not provide commodity rates on these articles, class rates of 32 cents applying on copper tacks and 25.5 cents on iron or steel tacks and on shoe-string nails.

Complainant further contrasts the ton-mile revenue on eyelets of 3.46 cents under the 32-cent rate and 2.05 cents under the 19-cent rate on yarn, cotton piece goods, and blankets, with the average ton-mile earnings of 6.47 mills for an average haul of 139 miles, of carriers in eastern territory for the year 1916 and the average revenue of the New York, New Haven & Hartford Railroad of 15 mills.

The manufacture of eyelets in this country is practically confined to New England. Defendant shows that there are manufacturers at Ansonia, Seymour, Waterbury, and Torrington, Conn., and Florence and Taunton, Mass., from which points to New York the dis-

tances, all rail, and the third-class rates applicable via all-rail or rail-and-water routes are as follows:

From—	To New York.		From—	To New York.	
	Distance.	Rate.		Distance.	Rate.
	Miles.	*Cents.*		*Miles.*	*Cents.*
Ansonia	73	29	Torrington	109	32
Seymour	77	29	Florence	154	36.5
Waterbury	90	30	Taunton	209	41.6

From New Bedford to New York the third-class rate is 10 cents less by water than by rail and the all-rail rate is made on the same basis, distance considered, as the class rates from the other producing points. While it does not follow necessarily that water rates should be on as high a level, relatively, as all-rail or rail-and-water rates, the above comparisons tend to show that the rates assailed were not and are not unreasonable.

Defendant urges that eyelets are transported throughout eastern territory on class rates, the only commodity rate shown being one of 12 cents from New Bedford to Boston, a distance of 52 miles, which was canceled May 22, 1918; that the rating on eyelets is on a reasonable basis as compared with the rating on other brass and copper articles, manufactured articles of brass being ordinarily rated first class; that class rates afford a reasonable basis for the transportation of eyelets; that, generally speaking, commodity rates on less than carload shipments are improper and unjustifiable; and that no reason for making an exception in the case of eyelets shipped in less than carloads appears, particularly as the class rates from New Bedford and other producing points are upon the basis found reasonable in *Proposed Increases in New England*, 49 I. C. C., 421, plus 25 per cent.

Defendant states that but a small percentage of the movement of eyelets from New Bedford is via the water line; that 90 per cent of the traffic of this line from New Bedford is cotton goods of various kinds; that the commodity rates thereon are made with relation to the rates from Boston, Fall River, Mass., Providence, R. I., and interior New England points; and that in view of the large volume of traffic in these commodities, which practically sustains the operation of the steamship line, it is unfair to compare rates on these articles with the rates on the relatively small tonnage of eyelets.

Complainant in its reply brief for the first time asserts that the class rates from New Bedford and other producing points to New

York, all rail, are higher than the rates to Philadelphia, Pa., a more distant point, in violation of the fourth section. Defendant's class rates from New Bedford to New York are lower than the class rates all rail from New Bedford, and the fourth section departure referred to, if found to exist, would not constitute a reason for the retention of the commodity rate from New Bedford.

We do not find that the rates in effect since June 25, 1918, were or are unreasonable, and an order dismissing the complaint will be entered.

No. 10361.

ROBERTS & SCHAEFER COMPANY

v.

DIRECTOR GENERAL, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, ET AL.

Submitted February 15, 1919. Decided October 20, 1919.

Charges on a less-than-carload shipment of machinery and machinery parts from Champaign, Ill., to South Akron, Ohio, not shown to have been unreasonable or unduly prejudicial. Shipment found to have been overcharged and reparation awarded.

Ralph Merriam for complainant.

C. P. Stewart for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

BY DIVISION 3:

By complaint seasonably filed complainant, a corporation, alleges that the charges collected by the defendant carriers on a shipment of machinery and machinery parts from Champaign, Ill., to South Akron, Ohio, September 29, 1917, were unreasonable and unduly prejudicial. It prays for reparation and reasonable rates for the future. Throughout this report rates are stated in cents per 100 pounds.

The shipment consisted of 90 pieces of machinery and machinery parts for a coal chute and moved over defendants' lines. It weighed 16,950 pounds on which charges were collected in the sum

of $95.59. A less-than-carload rate of 49 cents was legally applicable, so that the shipment was overcharged $12.53. There was contemporaneously applicable from and to the same points a carload rate of 20 cents, minimum 24,000 pounds. The tariff carrying these rates was subject to the official classification, under which, as in other territories, owners generally are required to load and unload freight carried at carload rates. The shipment was drayed by the shipper to the freight house and loaded by the agents of the initial carrier, but was unloaded by the consignee. The shipper's plant is served by a sidetrack and the record does not explain the shipper's failure to handle this as a carload shipment.

No attack is made against the measure of the rate as applied to less-than-carload shipments generally, but it is urged that the tariffs of the carriers were unreasonable in not containing a provision permitting the use of the carload rate and minimum weight, plus a reasonable loading charge, not exceeding 2.5 cents per 100 pounds, where a lower charge would result than under the application of the less-than-carload rate. The charges upon this basis would have been $52.24, or $30.82 less than those applicable.

According to an estimate of the carriers, the cost of loading this shipment was not materially different from the amount which would have been charged upon the basis proposed by complainant. But the cost of loading one shipment is of little value in determining the reasonable charge to be levied on traffic in general, and the carriers stated that testimony has been offered in other proceedings indicating that the station cost of handling less-than-carload shipments, as compared with the station cost of handling carload shipments, is substantially greater in official classification territory than the amount proposed.

The western classification provides that the charge for a less-than-carload shipment must not exceed the charge for a minimum carload of the same freight at the carload rate; and that in case of shipments tendered in less-than-carload lots, but upon which the carload rate and minimum are applied and loading and unloading service is performed by carrier's agents, a charge of 1.25 cents per 100 pounds will be made for the loading and a like charge for the unloading, such charge to be based upon the actual weight of the shipment. In the *Consolidated Classification Case*, 54 I. C. C., 1, at page 19, we approved a similar rule, except that the charge for the services of loading or unloading is 2.5 cents per 100 pounds.

But the mere approval of such a uniform rule for the future or its existence in western classification territory at the time this shipment moved is not proof that the charges paid by the complainant in this case were unreasonable and that reparation should be awarded. While the charges collectible at the less-than-carload rate were con-

siderably in excess of the charges which would have accrued at the carload rate, it may well have been that the less-than-carload rate was too high or the carload rate too low, and the fact that the spread between the rates was 29 cents, or, stated in other words, that the less-than-carload rate was 245 per cent of the carload rate, raises a presumption that such was the case. The complainant, however, did not allege that the less-than-carload rate was unreasonable as a less-than-carload rate. Upon the record presented we are unable to reach the conclusion that the absence of a rule providing for the application on this shipment of the carload rate plus a charge of 2.5 cents for loading resulted in the collection of unreasonable charges.

We find that the applicable charges are not shown by the record to have been unreasonable or unduly prejudicial. We further find that complainant made the said shipment and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those legally applicable; and that it is entitled to reparation in the sum of $12.53, with interest.

An order awarding reparation will be entered.

No. 10363.

SOLVAY PROCESS COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND DIRECTOR GENERAL OF RAILROADS.

Submitted June 21, 1919. Decided October 21, 1919.

Rates charged for shipments of limestone, in carloads, from Jamesville, N. Y., to Solvay, N. Y., found to have been and to be unreasonable. Reparation awarded.

Nathan L. Miller and *H. Duane Bruce* for complainant.

John L. Seager for Delaware, Lackawanna & Western Railroad Company.

William C. Redfield and *E. R. Magie* for Department of Commerce, intervener.

R. V. Fletcher for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

DANIELS, *Commissioner:*

The complainant operates a large plant for the manufacture of soda ash and alkali products at the village of Solvay, which adjoins the city of Syracuse, N. Y., on the west. Limestone used in this manufacture is procured from complainant's quarry at Jamesville, N. Y., a point a few miles southeast of Syracuse, reached only by the line of the Delaware, Lackawanna & Western Railroad Company, hereinafter referred to as the defendant, and is transported by defendant in carloads to complainant's plant at Solvay, a distance of about 9 miles. For some seven years prior to May 6, 1918, the rate charged for this service was 15 cents per long ton. On that date, following the decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303, the rate was increased to 17 cents per long ton; and on June 25, 1918, under General Order No. 28 of the Director General of Railroads, it was further increased by 1 cent per 100 pounds, or 22.4 cents per long ton. Under the rule for disposition of fractions, the rate thus became 40 cents per long ton. Complainant protested

against this increase, and the rate was reduced to 1.5 cents per 100 pounds, or 30 cents per net ton, effective September 16, 1918, which is the present rate. By complaint filed December 17, 1918, these rates in excess of the former rate of 15 cents per long ton are attacked as unjust and unreasonable, in violation of the act to regulate commerce and of the federal control act. Reparation and just and reasonable rates for the future are requested.

The rates in issue, although applicable only to intrastate traffic, were initiated by the Director General of Railroads, and by section 10 of the federal control act the duty of determining the justness and reasonableness of rates so initiated is laid upon this Commission. The Director General filed formal answer denying any violation of law, but was not represented at the hearing. A report proposed by the examiner was served on the parties. Exceptions were filed and the case was orally argued before the Division.

About 1909, complainant contemplated the acquisition of a site for a limestone quarry near Syracuse, and considered, among others, that at Jamesville. Preliminary to the selection and purchase, it corresponded with the defendant relative to the necessary transportation service and the charges therefor. It was at first proposed that the rate from Jamesville to Solvay should be 20 cents per long ton, the complainant to perform all of the switching at both quarry and plant, the defendant to furnish temporarily 20 cars, and the complainant to furnish any additional cars required. Defendant was to pay complainant 0.6 cent per mile for the use of such additional cars. Later, however, it was agreed that the complainant should furnish all of the equipment, without mileage compensation, and in consideration of this modification the rate was made 15 cents per long ton instead of 20 cents. Another available site with a limestone deposit was situated on the rails of the New York Central. Defendant contends that the rate agreed on was made with a view to the competitive situation.

The quarry was opened and shipments commenced to move in 1911. In addition to the kiln stone used at the Solvay plant, which is in large sizes, the quarry produces, as a by-product, smaller stone known as "spawls," and ground limestone. The latter products do not move to Solvay, and the rates thereon are not in issue. The production of kiln stone is about 75 per cent of the total. The traffic has greatly increased in volume, especially during recent years, as shown by the following table:

Year.	Carloads.	Net tons.	Freight charges.[1]
1911	1,825	95,461	.....
1912	8,624	453,727	$60,266.57
1913	8,682	456,241	61,140.35
1914	8,097	433,367	57,782.38
1915	9,591	528,095	70,584.32
1916	13,156	760,218	101,087.17
1917	15,037	879,457	118,560.22
1918	12,814	745,101	170,449.63

[1] These figures are based upon payments during the year and do not exactly correspond with the tonnage of that year.

Complainant's investment at the quarry is upward of $1,000,000. In preparation for the traffic defendant constructed sidings at Jamesville at an expense of about $7,000, and in 1915, better to accommodate its increasing traffic, constructed an additional main track between Jamesville and Syracuse at an expense of about $150,000. Defendant's witness testified that without complainant's traffic this additional track would not have been necessary.

The allegation of unreasonableness is supported largely by evidence bearing upon cost, and it is therefore necessary to consider the service with as much particularity as the record permits. The quarry and plant of the complainant are at opposite sides of the city of Syracuse, and the 9 miles of intervening track comprises a portion of the main line of the defendant's Syracuse and Utica division. The line runs directly through the city of Syracuse and passes defendant's Syracuse yards, which are near the center of the city. Under the present arrangement, a switching engine leaves the yards at about 4 a. m. and proceeds to Solvay, approximately 2.5 miles distant, where it picks up a string of empty cars, already assembled on complainant's track. It hauls these cars to the yards and delivers them to a road engine and crew for the haul of approximately 6 miles to the quarry. The train reaches the quarry between 7 and 7.30 a. m., where the cars are placed on a siding. The engine and crew remain at Jamesville until about 10 a. m., spending, when necessary, about two hours of the interval in switching for other shippers. The engine then picks up a string of loaded cars already assembled on the quarry siding and proceeds with them to Syracuse and Solvay. The train usually comprises 20 to 23 50-ton and 75-ton cars, loaded to capacity, and includes loads of spawls for Syracuse. The grade from the quarry to Syracuse descends about 57 feet per mile for a distance of approximately 5 miles. To the westward of the Syracuse yards, the grade ascends toward Solvay about 30 feet in a distance of 1 mile. It is estimated that one-half of the trains require the help of a "pusher" engine at this point. After placing the loads at the complainant's siding at Solvay, the engine immediately returns to

the quarry with another train of empties, which it exchanges for loads, leaving the quarry the second time between 4 and 4.30 p. m. After delivering these loads at Solvay it returns to the yards light. While the traffic was heaviest this operation proceeded on Sunday as on other days, but at other times only one trip has been made on Sunday.

According to the defendant, the regularity and time of movements were insisted upon by the complainant, but the latter maintains that the convenience of the carrier was also considered, in that the movements were so timed as to interfere least with the passenger traffic. It is alleged by defendant that complainant's traffic is given right of way through Syracuse and that other traffic is sometimes delayed in consequence.

Owing to the contribution of equipment and the performance of terminal services wholly by the complainant, the shipment is unique in character, and the determination of a proper maximum charge for the carrier's service offers unusual difficulties. The former assistant general freight agent of the defendant, who had much to do with the negotiations establishing the rate of 15 cents per long ton, testified that in arriving at the rate defendant considered the probable volume of traffic, the manner of handling, the saving of terminal service at Jamesville and Solvay, the cost of construction of tracks, the matter of furnishing equipment, and, in as much detail as practicable, the total expense to the carrier. The allowance of 5 cents per ton in consideration of the furnishing of equipment by the shipper was based upon an assumed investment of $100,000 an equipment life of 10 years, and interest upon capital at 6 per cent. It appears, however, that the complainant's investment in the equipment used in this service has not at any time reached $70,000. This witness, who left defendant's service in October, 1917, testified that the results of the arrangement had fully met expectations and that the traffic had been regarded as very profitable to the carrier. He had not given the matter specific attention since 1916. No increase in the rate upon this traffic was made by the carrier when the 5 per cent increase on interstate traffic was authorized in the supplemental report in *The Five Per Cent Case*, 32 I. C. C., 325.

Complainant made an attempt, by questioning defendant's employees and by calling for information from defendant's records, to establish the cost of the service involved. Upon this information, gleaned from witnesses, from statements filed after the hearing, from the defendant's annual reports to the Commission, and from other sources, complainant bases an argument that the former rate of 15 cents per long ton was high in comparison with the costs attributable to the particular traffic. The period selected was the calendar year

1918. The methods employed and the results may be summarized as follows:

Wages of train crew.—In response to complainant's request, defendant filed a statement showing the actual payments of wages to the road-engine crew employed in the service for the months of January, May, and October of each of the years 1912 to 1918, inclusive. The amount stated for those months of the year 1918 is $3,446.98, from which complainant estimates the total for the year at $13,787.92. Inasmuch as the crew was employed about two hours of each day in other switching, nine-elevenths of $13,787.92, or $11,281.02, is assigned to the stone traffic; and as, during 1918, only about 84 per cent of the stone traffic was moved to Solvay, complainant concludes that 84 per cent of $11,281.02, or $9,476.05 is chargeable to its traffic.

Engine costs.—Complainant requested of defendant a statement of the cost of fuel, oil, water, and other supplies furnished the engine used in the service for the years 1912 to 1918, inclusive. In response to this request, defendant filed a statement of the average of such costs per engine-mile for all its engines, both passenger and freight, for the years 1912 to 1917, inclusive. These items for the year 1917, which are higher than for any other year, aggregate 25.75 cents. Complainant computes the mileage of the engine as 36 miles per day, or 13,140 miles for the year, from which it deduces a total cost of $3,383.47 for the year, 84 per cent of which, or $2,842.11, is attributed to complainant's traffic.

Wages of gatemen and flagmen.—According to defendant's statement, the amount of wages of gatemen and flagmen employed on the line between Jamesville and Solvay for the months of January, May and October, 1918, was $8,862.27, from which complainant estimates that the total payments for the year amounted tc $35,449.08. Complainant assumes that about three-fourths of this amount, or $26,586.81, is chargeable to freight traffic, the basis of this assumption being that about three-fourths of defendant's total transportation revenue is derived from freight traffic. Complainant assigns 11.3 per cent of this $26,586.81, or $3,004.31, as the amount chargeable to the particular traffic here involved. The ratio of 11.3 per cent is thus explained: In response to a request from the complainant for a "statement of the number of cars handled on the Delaware, Lackawanna & Western through the Syracuse yard in the months of January, May, and October in each of the years 1912 to 1918, inclusive," defendant filed only a statement of the "number of cars arriving Syracuse yard, Year of 1918." The number thus shown is 112,782, from which complainant concludes that its traffic for the same year, 12,814 loaded cars, constituted 11.3 per cent of the total.

Maintenance of way.—Defendant's witness testified that the cost of maintenance of the main tracks here involved, for the year 1918, was $1,434.10 per mile, which, applied to the total of 13.62 miles of such tracks, amounts to $19,534.44. Applying to this amount successively the ratios of 75 per cent to segregate freight expense and 11.3 per cent to segregate the expense attributable to complainant's traffic, yields a final figure of $1,655.37 as the allowance for maintenance of main tracks. According to the same witness, the cost of maintenance of complainant's sidings was $593.73 per mile, or $866.84 for the total length of 1.46 miles. The total of maintenance of way costs chargeable to complainant's traffic as thus computed is $2,522.21.

Maintenance of engine.—Defendant expressed inability to state the costs falling under this head, and complainant estimates the amount at $2,000, taking into consideration the cost of the engine, $17,019.36, and the proportion of its service in hauling complainant's traffic.

Other expenses.—In the absence of information requested of defendant, complainant assigns, under this heading, an amount of $2,000 to cover superintendence, station expense, etc.

Taxes.—The average amount of taxes per mile of road paid by defendant for the year 1918 is stated at $3,744.49. Complainant multiplies this amount by 15, which is the number of miles of defendant's track used in this traffic, and applies to the product the ratios of 75 per cent and 11.3 per cent, already explained, arriving at $4,760.17 as the amount of taxes assignable to its traffic.

General expenses.—Defendant was requested by complainant to state its average general expenses per mile of road, but filed instead an apparent total for the system amounting to $295,914 for the months of January, May, and October, 1918, from which complainant estimates defendant's general expenses for the year at $1,183,656. Complainant then referred to Moody's Manual to ascertain defendant's total trackage, and by using the figures there given, 2,652 miles, reached an average expense per mile of $446, or $6,690 for the 15 miles involved. Again using the ratios of 75 per cent and 11.3 per cent, complainant arrives at $566.97 as the amount of general expenses chargeable to its traffic.

The items of cost thus arrived at aggregate $27,171.82 from which complainant concludes that the total cost to the carrier of handling the traffic here in question during the year 1918 could not possibly have exceeded $30,000, against which is shown an actual gross revenue of $170,449.63. The revenue at 15 cents per long ton would have amounted to $100,760.

Complainant also compares this revenue with the total investment, allowing $17,019.36 as cost of engine, $7,000 as investment in sidings,

and $270,000 as estimated investment in 9 miles of track, which is used for other traffic as well as complainant's and reaches the conclusion that a rate of 15 cents per long ton, after allowing 12 per cent for interest and depreciation, would have covered the total cost of service and yielded a profit of $35,000. It is also pointed out that the ton-mile earnings of this traffic, about 1.49 cents at the 15-cent rate and 2.98 cents at the 30-cent rate, are far in excess of the average for all of defendant's freight traffic, which, for the year 1918, was 9.02 mills.

The numerous assumptions resorted to by the complainant are not in all cases warranted, nor are the deductions always reasonable. For example, if the number of cars reported by defendant as having arrived at its Syracuse yards during the year 1918, 112,782, includes empty cars as well as loaded cars, it is obvious that complainant's deduction that its traffic constitutes 11.3 per cent of the total is incorrect. The average length of haul is greater than on the traffic in question. Nor is it at all apparent that complainant's cars should take the average basis. This ratio affects several of the principal items of cost. Engine-miles incident to the trips from yard to plant and return are omitted, as is also the expense of the service of the yard engine and "pusher" engine. The allowance of $2,000 for maintenance of the road engine used is considerably below the average cost of engine repairs alone, without consideration of depreciation. The method of arriving at the amount of general expense is of questionable accuracy and unauthorized by the record, but the character of movement and traffic indicates that the cost other than that directly connected with the movement of the trains is relatively low. Further criticism of complainant's methods might be made but it does not follow that its conclusions should be regarded as wholly without significance. Taking the figures of cost, so far as produced, together with other evidence of record, it seems probable that the traffic here involved, under the rate charged prior to May 6, 1918, was at least as profitable to the carrier as was its other carload freight traffic in general. During the year 1918 the average loading of complainant's cars was approximately 58 net tons, which at the rate of 30 cents per ton would have yielded a revenue of $17.40 per car.

Defendant made no affirmative showing of cost of service, but on brief expressed the hope that the Commission would not "give effect to any ill-considered or fragmentary cost figures or to figures based on inadequate study and on general average statistics." It seems appropriate to remark that a complainant's inquiry as to the cost of the service he receives, especially where rates are increased ostensibly to meet those costs, is entitled to serious consideration.

Defendant further contends that the rate of 20 cents originally offered by the carrier was influenced by the fact that complainant was then considering a quarry site on the New York Central, and that the reduction of 5 cents per ton in consideration of the furnishing of equipment by the complainant was excessive. In support of the latter contention the following computation was submitted:

Total investment in cars never exceeded (Ex. 6 and statement filed since hearing by witness Manning.)		$66,350.47
Interest at 6 per cent for 10 years		39,810.26
Investment and interest		106,160.73
Tons carried, 7 years	4,351,667	
Tons carried, 3 years (estimated)	2,384,776	
Total net tons	6,736,443	
Equivalent to 6,014,681 long tons, which, at 5 cents per ton, would amount to		300,734.05
Surplus after paying total purchase price of cars with 6 per cent interest available for maintenance, etc		194,573.32

However, an allowance of 6 per cent for return upon investment and for maintenance other than depreciation is presumably insufficient. Moreover, the consideration for the 5-cent reduction is not here fully accounted for. As already stated, the originally proposed rate of 20 cents contemplated the payment of mileage on complainant's cars. The true consideration was thus stated by defendant's vice president in a letter to complainant's president, dated November 29, 1909:

> In going over this matter again on the basis of your providing all the equipment from the start, it seems to us that a reduction of 4 cents per gross ton in the rate, that is, from 20 cents to 16 cents, would be, all things considered, an equitable adjustment.
>
> We feel, however, that we would rather be relieved of the burden of paying per diem, keeping the records, etc., and are prepared to name rate of 15 cents per gross ton on this traffic without the payment of mileage and with the understanding that you furnish all equipment necessary to handle the traffic.

Both parties submitted comparisons of the rates in issue with those charged for the transportation of stone at points more or less remote from Syracuse, but, apart from the movement from Oxford Furnace, N. J., to New Village, N. J., there is no such showing of similarity in circumstances as entitles the comparisons to controlling weight.

Defendant offers no defense of the 40-cent rate, which was in effect from June 25 to September 16, 1918. The reason for the change to 30 cents, effective on the latter date, is not shown of record, but counsel for the defendant assumes that the rate was reduced in recognition of the contributions of service by the complainant. In

defense of the present 30-cent rate, defendant cites the act of August 29, 1916, the President's proclamation of December 26, 1917, the federal control act, and the recital of General Order No. 28.

These recitals tend, however, to justify the rate increases under that order as a whole and not necessarily the increase in every rate. The order provided in general for an increase of 25 per cent in freight rates, but the rates on certain commodities, including that here involved were increased by specific amounts regardless of distance or volume of the rate increased. The increase of 1 cent per 100 pounds on complainant's traffic amounted to about 135 per cent of the former rate. Had the rate been $1 per ton instead of 17 cents, it is apparent that the increase would have been but 22.4 per cent. The present rate of 30 cents per net ton represents an increase of approximately 100 per cent.

It appears that complainant's traffic manager, under date of June 6, 1918, addressed the director of traffic of the Railroad Administration protesting against the proposed increase of 1 cent per 100 pounds on his traffic and asking that it be limited to 25 per cent instead. When General Order No. 28 was promulgated, an immediate increase of revenue was doubtless deemed imperative. It is not, however, to be presumed that there was any intent permanently to abandon the standards by which the rights of individual shippers had been determined during a period of peace. It is rather to be presumed that the constituted authorities had in contemplation ultimate readjustment in cases where the universality of their methods might be shown to work undue hardship upon particular shippers. It is unnecessary to consider here the justification for the general increases in rates; the question concerns the specific increase applied to what is an almost unique movement of this particular traffic.

The Secretary of Commerce was represented at the hearing and has filed a brief supporting generally the contentions of the complainant, but urging in addition the power and primary duty of the Railroad Administration to foster and protect commerce, with only secondary regard to the adequacy of rates as sources of revenue. He differentiates in this regard between federal and private control, pointing to the fact that the Railroad Administration is given the support of public funds derived from general taxation. He urges also the importance of relieving complainant's traffic from any unnecessary burden, in view of the utility of its products and their wide distribution. However, in considering its powers and duties under the federal control act in reviewing rates initiated by the Director General, the Commission has concluded that the words "just and reasonable," as used in that act, have substantially the same meaning as in the act to

regulate commerce, from which they are drawn. *Willamette Valley Lumbermen's Asso.* v. *S. P. Co.*, 51 I. C. C., 250, 258.

Upon all the facts of record, we find that the rates charged by defendants for the transportation of complainant's shipments of limestone in carloads, from Jamesville to Solvay, moving after June 25, 1918, were, and that the present rates, are, and for the future will be, unjust and unreasonable to the extent that they exceeded or may exceed 25 cents per long ton. An order to this effect will be entered. We further find that since June 25, 1918, complainant has made numerous shipments from Jamesville to Solvay, as described, and has paid and borne the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found just and reasonable; and that it is entitled to reparation, with interest. The amount of reparation due should be determined in the manner provided in rule V of the Rules of Practice, and when so determined the entry of an order for reparation will be considered.

Ex Parte No. 67
ILLINOIS CLASSIFICATION.

Submitted October 18, 1919. Decided November 8, 1919.

Upon investigation, instituted under section 8 of the federal control act approved March 21, 1918, at the request of the Director General of Railroads, who asked the Commission to advise him whether in its judgment and opinion the present Illinois classification and the present class and commodity rates applicable between points in Illinois should be continued in effect: *It is recommended:*

1. That for the rules, descriptions, packing specifications, and minimum and estimated weights of the Illinois classification there be substituted the corresponding portions of the consolidated classification, subject to the modifications thereof indicated in *Consolidated Classification Case*, 54 I. C. C., 1;
2. That the Illinois scale of class rates and ratings applicable thereto under the Illinois classification be canceled; and the Disque scale, governed by the contemporaneous official classification, be substituted therefor and applied between points in the Illinois district south and east of the lines indicated, extending from Chicago through Peoria to St. Louis, Mo.; and that class rates, governed by the contemporaneous western classification, and not higher than the level of interstate rates between points in northwestern Illinois and adjoining states, be substituted therefor and applied between points in the Illinois district on, north, and west of the Chicago-St. Louis line;
3. That a review of particular commodity rate structures be made in order to remove discriminations which now exist or may arise from any readjustments growing out of these recommendations.
4. Specific recommendations made with respect to commodity rates on certain articles.

N. S. Brown, A. P. Humburg, C. P. Stewart, and *D. P. Connell* for the carriers; *H. A. Scandrett* for United States Railroad Administration; and *R. C. Fyfe* for Western Classification Committee.

O. P. Gothlin for Public Service Commission of Indiana; *R. B Coapstick* for Indiana State Chamber of Commerce; *H. E. Fairweather* for Chamber of Commerce, Fort Wayne Traffic Bureau; *S. F. Prince* for Advance Rumely Company; *Carl Bauermeister* for Charles W. Bauermeister Company; *Lee Stern* for Indiana Coke & Gas Company; *J. A. Benell* for Haynes Automobile and Kokomo Allied Industries; and *Samuel D. Royse* for Indiana Chamber of Commerce, Home Packing & Ice Company, Joseph Diekemper & Sons, and Evansville Packing Company.

Clarence B. Cardy for Indiana Chamber of Commerce; *C. A. Royse* for Highland Iron & Steel Company and Indiana State Chamber of Commerce; *L. A. Clark* for Ball Brothers Glass Manufacturing

Company; *Charles F. Hanley* for Hoosier Rolling Mill Company; *Frank E. Connett* for Dyer Packing Company; *S. N. Bradshaw* for National Rolling Mill Company; *John A. Ronan* for Iron Dealers' Traffic Association, Lumbermen's Association of Chicago, and Edward Hines Lumber Company; *Thos. L. Taggart* for Indiana Quarries Company; *R. W. Ropiequet* for Illinois District Traffic League; *F. T. Bentley, C. H. Schniglau,* and *W. O. Davis* for Illinois Steel Company, American Sheet & Tin Plate Company, American Steel & Wire Company, and American Bridge Company; and *W. E. Long* for Manufacturers Association and Illinois District Traffic League.

Colin C. H. Fyffe, R. W. Ropiequet, and *Murray N. Billings* for Illinois Manufacturers Association; *R. M. Field* for Peoria Association of Commerce and Illinois District Traffic League; *H. M. Slater* for Public Utilities Commission of Illinois; *John S. Burchmore, Luther M. Walter,* and *A. W. McLaren* for Morris & Company; *John S. Burchmore* for Wholesale Sash & Door Association; *H. C. Barlow* for Chicago Association of Commerce; *Butler, Lamb, Foster & Pope,* by *E. S. Ballard,* for Steel & Tube Company of Indiana and National Malleable Castings Company; and *Clifford Thorne* for Western Petroleum Refiners Association, American Independent Petroleum Association, and Illinois Live Stock Shippers Association.

M. F. Gallagher and *Francis B. James* for National Paving Brick Manufacturing Association, American Face Brick Association, and the Hollow Building Tile Association; *W. J. Womer* and *E. A. Maginnis* for Chicago District Ice Association; *Robert J. McBride* for Chicago Feed & Fertilizer Company, Knight Light & Soda Fountain Company, Manufacturers & Retailers Company, C. F. Pease Company, Pioneer Asphalt Company, D. A. Stuart Company, and Abingdon Sanitary Manufacturing Company; *J. A. Brough* for Crane Company, J. B. Clow, and other dealers in Iron Pipe, Fittings, etc.; *A. D. Seelig* for American Car & Foundry Company; *C. A. Brantley* for Libby, McNeill & Libby; *Joseph A. Maguire* for Barber Asphalt Paving Company; and *Thomas L. Wolff* for A. E. Staley Manufacturing Company and Decatur Association of Commerce.

Lewis B. Boswell for Quincy Freight Bureau; *H. K. Crafts* and *W. W. Manker* for Armour & Company; *R. D. Rynder* for Swift & Company; *C. O. Dawson* for Sprague, Warner & Company and Wholesale Grocers Exchange of Chicago; *H. H. Bascom* and *Robert Hula* for Steel & Tube Company of America; *C. L. Lingo* for Inland Steel Company; *P. M. Hanson* for National Enameling & Stamping Company and East Side Manufacturers Association; *W. F. Munk* for Mineral Point Zinc Company; and *F. H. Belden* for Marble Head Lime Company and other Illinois lime producers.

Frank A. Larish for Prepared Roofing & Shingle Manufacturers Association; *J. L. Roberts* and *N. L. Shannon* for Barrett Company; *C. A. Shank* for National Brick Company; *W. M. O' Keefe* for National Poultry, Butter & Egg Association; *O. P. Kerr* for Manufacturers Association of Chicago Heights; *Ray Williams* for Cairo Board of Trade; *W. J. M. Lahld* for American Seating Company; and *W. J. Womer* and *G. H. Lamberton* for Illinois-Wisconsin Ice Dealers Association.

W. R. Allison and *E. G. Felsenthal* for Illinois Brick Company; *F. E. Paulson* and *E. S. Gubernator* for Lehigh Portland Cement Company and Mitchell Lime Company; *I. L. Colborn* for Armour Grain Company; *W. F. Blanchfield* for Live Poultry & Dairy Shippers' Traffic Association; *J. E. Flansburg* for American Manganese Steel Company; *H. E. Gunn* for American Stave & Board Company; *C. A. Liedberg* for Great Lakes Dredge & Dock Company; and *R. C. Livingston* for Interstate Iron & Steel Company.

J. D. Gray for S. Birkensten & Son, Lowenthal Company, Great Western Smelting & Refining Company, H. Kramer & Company, Benjamin Harris, United States Reduction Company, L. A. Cohn & Brother, Gumbinsky Brothers Company, Pioneer Paper Stock Company, Western Paper Stock Company, Vulcan Louisville Smelting Company, West Side Iron & Metal Company, N. Deutch, Goldsmith Brothers Metals Refining Company, and Metals & Thermit Corporation; *F. J. Danner* for Moline Plow Company; *J. W. Bingham* for Corn Products Refining Company; *D. W. Forsberg* for Free Sewing Machine Company; *W. E. Gorman* for Douglass & Company; *John L. Fry* for J. C. Hubinger Brothers Company; *G. J. Nielsen* for Gordon Van Tine Company and U. N. Roberts Company; *W. B. Martin* for Dubuque Shippers Association; and *Carl D. Jackson* for Railroad Commission of Wisconsin.

J. J. Killian for Clinton Sugar Refining Company; *George M. Cummins* for Davenport Commercial Club; *Dwight N. Lewis* for Iowa Railroad Commission; *Walter Condran* for Board of Railroad Commissioners of Iowa and Iowa-Mississippi River cities; *R. J. Geagan* for Roxana Petroleum Company; *Dower V. Eddy* for Laclede Steel Company; *E. M. Benish* for Glencoe Lime & Cement Company and Missouri lime producers; *P. W. Coyle* for St. Louis Chamber of Commerce; *G. T. McClure* for International Shoe Company; and *Louis A. Lapham* for Brown Shoe Company.

F. W. Schneider for Hunkins, Willis Lime & Cement Company and Genevieve Lime Company; *O. Van Brunt* for Certain-teed Products Corporation; *Francis B. James* and *E. E. Williamson* for American Fan Brick Manufacturers Association and American Hollow Tile Manufacturers Association; *W. W. West* for Traffic

Bureau, Chamber of Commerce, La Crosse, Wis.; *A. C. Mecke* for Patton Paint Company; *M. S. Hoffman* for John Pritzlaff Hardware Company; *F. B. Marshfield* for Cutler Hammer Manufacturing Company; *Emil L. Fuhrmann* for Society of Fabricators of Iron & Steel, of Milwaukee; *Frank Barry* for Milwaukee Association of Commerce; and *R. S. Thompson* for A. George Schulz Company and Rock Falls Box Board Company.

A. Murawsky for National Enameling & Stamping Company; *F. M. Elkinton* and *Herman Mueller* for Wisconsin Traffic League and others; *A. E. Solie* for Central Wisconsin Traffic Association; *A. F. Vandergrift* for Louisville Board of Trade; *A. J. Earl* for Kelly Island Lime & Transport Company and Indiana Lime producers; *Henry R. Park* for Chicago Live Stock Exchange; *J. P. Curran* for Bottle Manufacturers of State of Illinois; and *J. B. Hayes* for Illinois Glass Company.

J. C. Graham for Jackson Chamber of Commerce and Michigan Traffic League; *Leo Golden* for Burlington Shippers Association; *J. R. Bremner* for Gisholt Machine Company and Fuller & Johnson Manufacturing Company; *F. C. Marzolph* for Muscatine Chamber of Commerce and National Association of Button Manufacturers; *C. S. Bather* for Rockford Manufacturers & Shippers Association; *W. F. Kerwin* for Green Bay Association of Commerce; *Earl M. Medbery* for Indian Packing Company; and *John P. Haynes* for Traffic Bureau of the Chamber of Commerce of Sioux City, Iowa.

J. G. Brice for Shippers Freight Traffic Association, Heine Safety Boiler Company, and Mississippi Valley Iron Company of St. Louis, Mo.; *John D. Reynolds* for American Independent Petroleum Association; *O. R. Livinghouse* for Globe Stove & Range Company and Kokomo Chamber of Commerce; *J. S. Brown* and *S. H. Benson* for Chicago Board of Trade; and *J. H. Hodson* for Root Glass Company.

Report of the Commission.

Meyer, *Commissioner:*

This investigation was instituted under section 8 of the federal control act, approved March 21, 1918, in response to a request from the Director General of Railroads that we advise him whether in our judgment and opinion "the present Illinois classification and the present class and commodity rates applicable between points in Illinois should be continued in effect, and if not what amendments should be made thereto, or what classification and what adjustment of class and commodity rates should be substituted therefor."

Hearing was held, and a proposed report, prepared by the examiner, was served upon the parties. Exceptions were filed and argument heard. It is deemed unnecessary to reproduce the entire proposed report.

The examiner has accurately stated the proceedings which gave rise to the Director General's request for this investigation, as follows:

In April, 1918, which was several months after the Government assumed control of the principal railroad lines of the country, applications were filed with this Commission and with the Public Utilities Commission of Illinois, asking for authority to cancel the Illinois classification and the Illinois class and commodity rates, and to substitute therefor the official classification and the same general level and scheme of class and commodity rates as applied in C. F. A. territory. These applications, however, along with all others then pending, in which increased rates were asked by the carriers under federal control, were shortly afterward canceled by the Director General.

Subsequently, July 8, 1918, the Public Service Commission of Indiana filed a petition with the Director General, alleging that the maintenance of lower classification ratings and lower class and commodity rates within Illinois than applied on traffic from points in Indiana to points in Illinois, was unreasonably preferential of Illinois and its shippers and operated to the undue prejudice of Indiana and its shippers. It was also alleged that by the maintenance of the lower ratings and rates within Illinois the United States Government was not equitably distributing the transportation tax, but was placing an undue burden upon the people of Indiana. As a remedy for the situation, the Indiana commission asked for substantially the same rate revision as the carriers proposed in the applications referred to. Hearings were held by the Chicago eastern district and the Chicago western district freight traffic committees of the Railroad Administration. The members of these committees in making their reports and recommendations to the Director General on the subject of canceling the Illinois classification and the Illinois scale of class rates practically split along party lines, the representatives of the Railroad Administration supporting the proposal of the Indiana commission, and the representatives of the shippers opposing it and recommending for the most part a continuance of the present situation. As to commodity rates, hearing was had but no recommendation was made.

At the hearing it was advocated on behalf of the railroads that the Illinois classification be canceled and that the official classification be substituted therefor; and that the Illinois maximum distance scale of class rates be supplanted by the new C. F. A. class scale, hereinafter referred to as the Disque scale, prescribed for central freight association territory in *C. F. A. Class Scale Case*, 45 I. C. C., 254, modified following the orders in the *Fifteen Per Cent Case*, 45 I. C. C., 303, and increased 25 per cent under General Order No. 28 issued by the Director General of Railroads.

As to commodity rates the railroads propose, in lieu of those in effect in the Illinois district, to substitute those in effect in central freight association territory, now officially designated central territory, which are generally related to the class rates on a percentage basis; to increase the commodity rates on other articles 15 per cent, or arbitraries, plus 25 per cent, in accordance with the *Fifteen Per Cent Case, supra*, and General Order No. 28, respectively; and to increase the commodity rates on certain other articles by specific, or arbitrary amounts or to cancel them, leaving class rates in effect.

The territory into which they propose to extend the application of the official classification and the C. F. A. class and commodity rates, is that in which the Illinois classification now applies and extends beyond the Illinois boundary into southern Wisconsin, including Milwaukee and Madison; to points on the west bank of the Mississippi River between Dubuque, Iowa, and Cairo, Ill.; to Paducah, Ky.; and to certain points in Indiana adjacent to the Illinois state line. This territory, referred to herein as the Illinois district, is common to the three great classification territories, official, western, and southern, which makes it the center of conflicting territorial rate adjustments.

Elaborate testimony was offered on behalf of the railroads to show that the Illinois scale of maximum rates, governed by the Illinois classification, and as modified by General Order No. 28, is unreasonably low; and that there are no different transportation conditions in the Illinois district which justify a lower level of class rates than exist in Indiana, Ohio, and Michigan, governed by the official classification. They contend that the present rate adjustment in the Illinois district gives that district an undue preference and subjects the shippers in Indiana, Ohio, and Michigan to undue prejudice and disadvantage; and that the substitution of the Disque scale, governed by the official classification, will produce a uniform level of reasonable rates and remove the undue prejudice against the three other states.

The Public Service Commission of Indiana and the Indiana Chamber of Commerce contend that the present Illinois district adjustment, maintained by the agencies of the federal government under a war measure, is upon a lower level than the rates in Indiana, and thereby fosters commerce in Illinois and represses it in Indiana. A number of their witnesses testified that decreases in volume of their shipments into Illinois territory were directly attributable to higher bases of freight rates in Indiana. The examiner correctly described this situation as follows in his proposed report:

> Jobbers and manufacturers of many different articles at Indianapolis, Terre Haute, La Fayette, La Porte, Fort Wayne, and other points in Indiana and at Louisville, Ky., distribute in less than carloads to points in Illinois. In so doing they must sell against competitors located at Chicago, Peoria, Bloomington, and other points in Illinois, and also at St. Louis, Mo., which is accorded substantially the Illinois scale of rates. To successfully meet the competition of those who enjoy the Illinois rates the Indiana shippers must in many instances absorb the differences in freight rates. Some have noticed a substantial falling off in business done by them in Illinois, although their business in other directions has increased; and the evidence strongly indicates that to a considerable extent the loss has been due to the freight rate situation. Especially is this true of the heavier and lower grade articles as to which the freight rates constitute a large proportion of the delivered value. Perhaps most of the business done by the Indiana shippers in Illinois is along the eastern border, but there is also a

substantial amount done by some of them throughout the state. What we have said has particular reference to less-than-carload traffic moved at class rates. However, as to carload traffic also, some examples were cited wherein the existing rate situation operates to the disadvantage of Indiana shippers. Such instances generally arise out of commodity rates and minimum weights rather than out of differences in carload ratings and class rates.

On behalf of the state it was further testified that Indiana, having no control over intrastate rates during the period of federal control, must pay higher rates of freight to maintain its public institutions and state roads than does the state of Illinois for like purposes; that the maintenance of a higher level of rates for equal distances in Ohio, Indiana, and lower Michigan than in Illinois places an unjust burden upon the former in the nature of federal transportation taxes; and that the injury to Indiana resulting from prejudicial rates was increased by taxes which it must bear in order to make up a deficit from the operation of the railroads attributable in part to such prejudicial rates.

The Illinois District Traffic League, Illinois Manufacturers Association, and individual shippers in that district oppose the substitutions proposed by the carriers. They contend that there is public necessity for their separate classification and rate adjustment, the abolition of which would result in disturbances detrimental to, and perhaps destructive of, the business and commerce of the district. They claim that the Illinois district is in western and not in eastern rate territory and regard with apprehension the proposed change from the western system of rate grouping to the eastern system of distance scale rates. They further contend that there is no state-wide discrimination against Indiana under the existing adjustment. In so far as any discriminations between particular commodities or localities are shown to exist, they propose that such situations be remedied by the restoration of former territorial adjustments, which were satisfactory to Indiana shippers when they were in effect, or by resort to the usual and ordinary channels of relief. They characterize the proposals of the carriers as an attempt to secure wholesale advances in the Illinois district rates, which were denied the western roads in the *Western Rate Advance Case*, 35 I. C. C., 497. They further contend that the statistics of traffic density and operating incomes of the principal lines in Illinois conclusively show that those lines are receiving a relatively high return from traffic moved at the present rates; and that there is no justification for the increases which would result from the proposals of the railroads.

The Wisconsin Traffic League and others state that the advances proposed are in the interests of the eastern carriers and are not sought by the western lines which alone serve Wisconsin; that no complaint is made by Indiana of undue preference of Wisconsin; and they contend, therefore, that there is no justification for the proposed changes,

which would seriously disturb a substantial portion of Wisconsin's class and commodity rate structures.

Opposition to the railroads' proposals was also voiced on behalf of the interior Iowa cities.

THE CLASSIFICATION.

The Illinois classification is similar to the western in that it has 10 primary classes. These are designated by numbers 1 to 10, instead of by numbers 1 to 5 and letters A to E, as in the western. The ratings in the Illinois classification are in many instances different from those in the official, western, and southern classifications. Out of 15,477 items in the official there are 4,106 which apparently have no counterparts in the Illinois classification, and in such instances the western is used in order to obtain the rating in Illinois. Comparison [1] of the official with the Illinois classification as thus supplemented by the western shows that out of the total of 15,477 items, 2,633, or 17 per cent, are rated higher in the Illinois than in the official, 7,750, or about 51 per cent, are rated the same in both, while 5,093, or about 33 per cent, are rated lower in the Illinois than in the official. Out of a total of 10,841 less-than-carload items, which are rated fifth class or higher, 1,924, or about 18 per cent, have higher ratings in the Illinois than in the official, 5,700, or 53 per cent, are rated the same in both classifications, and 3,217, or about 30 per cent, are rated lower in the Illinois than in the official. It is therefore clear that the general level of the Illinois classification ratings is lower than that of the official classification. The comparison of ratings in these two classifications is shown in detail in Appendix 1.

If the Illinois classification were canceled and the official used in its stead, most of the articles now in classes 6, 7, 8, 9, and 10 of the Illinois classification would fall into classes 5 and 6 of the official classification or into the exceptions, resulting in many radical increases on raw materials and on low-grade carload freight in general. For instance, prepared roofing and shingles, rated class 9 in Illinois, would be rated 90 per cent of sixth class. However, the great bulk of the traffic assigned to the lower classes of Illinois classification moves on commodity rates and would not be actually affected, if the classification were deleted and the commodity rates left in effect. In the absence of commodity rates, classes 7, 8, 9, and 10 of the Illinois classification embrace much of the traffic which is assigned to classes B, C, D, and E of the western classification.

The Illinois interests urge that the Illinois classification is justified by the fact that the differences in ratings, in the three general classi-

[1] The comparisons are not exact, as they are based upon the ratings shown in the proposed consolidated classification, which was not approved, so far as ratings are concerned, in *Consolidated Classification Case*, 54 I. C. C., 1.

fication territories, converge, so to speak, upon Illinois, and that so far as the first four classes are concerned, the Illinois classification is necessary to protect the Illinois shippers from the injurious effects of the conflict of ratings in the three major classifications. It is said to have been and to be the policy of the Illinois commission in fixing ratings to take into account the rating in the classification territory from which comes the competition that Illinois shippers meet in distributing goods to Illinois. Apparently this policy has often resulted in making the rating in the Illinois classification the same as the lowest rating in the three general classifications.

Cancellation of the Illinois classification and the substitution of the western classification would not entail the serious consequences that would attend the cancellation of state classifications in the south, indicated in our report in the *Consolidated Classification Case, supra,* for the reason that the Illinois classification is not so radically different from the western. If a substitution is to be made Illinois shippers prefer the western to the official.

It was stated to be the purpose of the Public Utilities Commission of Illinois to adopt the uniform rules, descriptions, and minimum and estimated weights approved in the *Consolidated Classification Case, supra;* to delete all of their obsolete ratings; to raise such of their ratings as are lower than in any of the three major classifications; and to adopt the ratings of the western, official, or southern classifications according to the direction in which the competition with respect to the various articles lies. At the argument the carriers suggested, in lieu of leaving the Illinois classification temporarily in effect pending the unification of western and official classification ratings as proposed in the examiner's report, that the western classification and the Disque scale be substituted for the Illinois classification and scale.

ILLINOIS CLASS RATES.

In 1905 and 1906 the Illinois commission ordered reductions in its maximum scale of class rates, having found that the then existing scale was very much higher than the scales in effect in Iowa, Indiana, and Ohio. Since that time the class rates in central territory have been increased subsequent to the *Five Per Cent Case,* 31 I. C. C., 351, the *C. F. A. Class Scale Case, supra,* the *Fifteen Per Cent Case, supra,* and General Order No. 28. Except as to General Order No. 28 no corresponding advances have been made in the Illinois scale. The history of these changes was summarized by the examiner in his proposed report as follows:

> Early in 1902, a number of complaints were made to the Illinois commission, alleging that freight rates in Illinois, based upon the then-existing Illinois classification and Illinois maximum distance scale of class rates, were unreasonable in that they exceeded the rates on like traffic for similar distances in C. F. A. territory east of the

Indiana-Illinois state line. The state and interstate class rates in that part of C. F. A. territory were then on a lower basis than prevailed in any other section of the country. In addition, the rates in this portion of C. F. A. territory were based on an illogical scale and were inconsistently applied. Among others, certain rates within Indiana and from Indiana into Illinois were exceptionally low. The principal movement of class rate traffic was from the east toward the west, and the lower rates applicable thereto than to Illinois state traffic made it difficult for Illinois manufacturers and merchants to compete with those in C. F. A. territory.

The Illinois commission, after a hearing in 1902, entered upon a revision of the Illinois classification and maximum scale of distance class rates, but apparently made no order requiring the change in ratings or rates until December, 1905, after the case had been reopened and further hearing had at the instance of some of the original complainants. The order then issued called for a reduction of 20 per cent in the intrastate class rates of all the principal Illinois roads. These roads immediately protested that, so far as carload traffic was concerned, the reductions were too severe. The order as to classes 6 to 10, inclusive, was thereupon suspended, but the reductions in classes 1 to 5 were required to be put into effect forthwith. Subsequently, the original order was modified to provide that on classes 6 to 10, inclusive, and on commodities, the reduction should be on a sliding scale, commencing with 10 per cent on sixth class and progressing downward. The order, as modified, was complied with by the carriers. As we understand it, the reductions brought the rates on the principal classes almost to the level of those in C. F. A. territory. It is urged by protestants that these reductions were, in a way, voluntary. It is explained that so far as the first five classes are concerned, the reductions were in harmony with reductions agreed to during the course of the proceeding, between the Chicago shippers and the executives of the carriers, and that as to the lower classes it was made upon the basis of comparisons with rates in Iowa and C. F. A. territory, submitted by the carriers themselves.

There was no further change in the rates in Illinois or in C. F. A. territory until 1914, after our decisions in *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325. The interstate class and commodity rates east of the Mississippi River were then increased 5 per cent, as were also the intrastate rates in the states east of the Indiana-Illinois state line. The Illinois commission, however, refused, except as to certain commodities, to permit the increase in Illinois. The main objection offered by those who protested the proposal for a 5 per cent increase in Illinois was that lower rates still prevailed in Indiana and from Indiana into Illinois than within Illinois, notwithstanding the reduction made in Illinois rates in 1905 and the 5 per cent increase in C. F. A. territory in 1914.

In *The Five Per Cent Case, supra*, we commented upon the depressed, illogical and inconsistent rates in C. F. A. territory and suggested that a general readjustment was desirable. Shortly after our decision was announced, the carriers set to work upon a general revision of the interstate class rates east of the Mississippi River covering the territory as far east as and including the Buffalo and the Pittsburgh groups, and after about two years' work on the part of a specially selected official and clerical force, they put before us for approval a new system of rates. It included not only class rates, but also some commodity rates which, for the most part, are those that are based upon definite percentages of certain class rates. After exhaustive hearing, we condemned the carriers' proposed scale and suggested in lieu thereof a different scale; *C. F. A. Class Scale Case*, 45 I. C. C., 254. About the same time we made our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and approved, so far as lines in the eastern district are concerned, a proposal for a general increase of 15 per cent in class rates. Similar increases were later permitted in practically all commodity rates of lines in the eastern district. *Orders of March 12, 1918.* The precise scale of rates we suggested in the *C. F. A. Class Scale Case, supra*, was never put into

effect, as the carriers were authorized to add the 15 per cent increase to those rates before they were published. Immediately after our decision was announced, the carriers set out to have the same scale, with the 15 per cent increase, adopted in various states in C. F. A. territory, in lieu of the then-existing intrastate rates. The new rates, so far as interstate traffic was concerned, went into effect September 20, 1917. In such states or in such parts of these states as are in C. F. A. territory the scale became effective as follows for intrastate traffic: In New York and Pennsylvania September 20, 1917; in West Virginia and Ohio October 20, 1917; in Indiana November 20, 1917; and in Michigan January 21 to February 12, 1918. After our decision in *The Fifteen Per Cent Case, supra*, the Illinois lines withdrew their applications for a similar increase on intrastate traffic, which were then pending before the Illinois commission and the increase was never made.

Stated briefly, after the Illinois rates were reduced, three advances were made in the rates between Illinois and points east of the Indiana-Illinois state line, and in C. F. A. territory, viz., the five per cent increase, the increases resulting from the general revision in C. F. A. territory, and the fifteen per cent increase, while no increases were made in Illinois, except 5 per cent on a limited number of commodities. The class rates in Illinois were always as high or higher than in C. F. A. territory until the recent general advances in interstate rates, as authorized by us, were put into effect.

At the hearing before the Indiana commission, wherein the carriers sought the establishment of the C. F. A. scale for intrastate traffic, a vigorous protest was made by manufacturers and jobbers of that state. They asked that no change be made in Indiana until the rates in Illinois were revised and increased. The carriers explained that it was their intention to ask a readjustment and the adoption of the official classification and the C. F. A. scale in Illinois. In view of this explanation, and with a desire to further the establishment of a uniform scale of rates throughout the territory east of the Mississippi River, the Indiana commission approved the C. F. A. scale for Indiana intrastate traffic for a period of one year from December 7, 1917, and later extended the time to June 1, 1919. The Indiana commission qualified its approval by the following statement: "Should the state of Illinois refuse to establish the proposed rates and modify its classification, the Public Service Commission of Indiana in defense of its industrial and commercial life, will be compelled to establish the same level of rates and the same classification intrastate in Indiana as established intrastate in the state of Illinois."

On March 21, 1918, by virtue of the federal control act, all states were deprived of their jurisdiction over rates, and on June 25, 1918, the state and interstate rates hereinbefore mentioned, that were in effect on that date, were increased, generally 25 per cent, in accordance with the Director General's General Order No. 28, and are still maintained. The C. F. A. scale of class rates, as authorized by the Commission and increased by the Director General, is the scale that the Indiana commission wishes to have the Director General extend as far west as the Mississippi River in order to cure the undue prejudice and the undue burden which is alleged to exist.

A comparison of the Illinois scale with the Disque scale is shown in Appendix 2. It is apparent that for equal distances the Disque scale, classes 1 to 4, averages between 15 and 20 per cent higher than the corresponding classes in the Illinois scale. Fifth and sixth classes in Illinois are almost equal, sixth being but a shade lower than fifth except for distances up to 60 miles, where it is slightly higher than fifth. In the absence of commodity rates these classes would move a very large proportion of the traffic that moves

at fifth class in central territory. For certain distances class 5 in the Illinois scale is approximately the same as class 5 in the Disque scale; for others it is higher and for some it is lower than in the Disque scale. Class 6 in the Illinois is higher than in the Disque scale. Class 7 in Illinois is between 5 and 6 of the Disque scale. Class 8 is appreciably lower than sixth class and classes 9 and 10 are much lower than sixth in the Disque scale.

The existing disparities in class rates between the Illinois district and central territory are widened in many instances by differences in classification ratings. For example: Wrapping paper, axle grease, and paint, in certain packages, less than carload, are rated third class in the official and fourth class in the Illinois classification. For 100 miles the rate is 19 cents in the Illinois district and 29 cents under the Disque scale. On the other hand, gelatine, less than carload, is rated second class in Illinois and 20 per cent less than third class in official; and the rate for 100 miles is 31 cents in the Illinois district and 23 cents under the Disque scale. From a study made on behalf of the carriers it is estimated that the substitution of the official classification and the Disque scale would increase the charges on less-than-carload traffic in the Illinois district by about 36.5 per cent.

The effect of the carriers' proposed changes upon the rate adjustments of the Mississippi River cities is typified by the following illustration: Canned goods, in glass, are rated first class in the official and fourth class in the western; under the Disque scale the first-class rate from Chicago, Ill., to Davenport, Iowa, 172 miles, would be 54.5 cents, as compared with the fourth-class rate of 54 cents governed by the western classification from Chicago to Topeka, Kans., 517 miles. While such departures from the rule of the fourth section of the act might occur as to points adjacent to lines which divide the classification territories, it is claimed and shown by the Illinois interests that the carriers' proposals would seriously interfere with the present rate structures under which difficulties of this character have been adjusted satisfactorily, and some of which are based upon rate structures fixed by us after extensive investigations. They further show that the proposals would greatly increase the number of such departures from the long-and-short-haul clause.

While at various points in the record there are suggestions, chiefly of a minor kind, to the effect that there are differences in the character of the territory comprised in Indiana and Illinois, respectively, from the standpoint of transportation, the consensus of view doubtless is, and we believe this to be correct, that the territory in the two states is essentially similar in character and that the Indiana-Illinois line does not divide diverse transportation conditions.

Some testimony and a series of exhibits were submitted for the purpose of showing the financial condition of the carriers primarily concerned in this investigation and the effect upon their respective revenues of the different proposals. Nevertheless, we do not believe that the issues presented should be viewed from the revenue standpoint. This is a discrimination and not a revenue case.

The weight of the evidence is overwhelming to the effect that Indiana has suffered and is suffering from undue prejudice. This may be said especially with reference to class traffic. A large number of exhibits demonstrates this. As will be noted later, with respect to commodity traffic, the situation has not been generally prejudicial to Indiana, except in the case of a relatively small number of commodities. The record also shows some instances in which the Illinois district has suffered undue prejudice both in class and in commodity traffic; but this is a relatively small feature of this investigation. Furthermore, the existence of a wrong in the Illinois district can not justify the continuance of a wrong in Indiana. The unjust discriminations should be removed wherever they are.

RECOMMENDATIONS AS TO THE ILLINOIS CLASSIFICATION AND CLASS RATES.

We recommend:

(1) That for the rules, descriptions, packing specifications, and minimum and estimated weights of the Illinois classification there be substituted throughout the Illinois district the corresponding portions of the consolidated classification, as approved by us and subject to the modifications thereof indicated in *Consolidated Classification Case, supra.*

(2) That for the Illinois maximum scale of class rates and ratings applicable thereto under the Illinois classification there be substituted the Disque scale of class rates, governed by the contemporaneous official classification for application between points in the Illinois district south and east of the lines of the Atchison, Topeka & Santa Fe Railway from Chicago through Joliet and Streator to Peoria, and the line of the Chicago & Alton Railroad from Peoria through Springfield, Alton, and East St. Louis to St. Louis, Mo.; but as to articles which move at class rates in the Illinois district and at percentages of class rates or at commodity rates in central territory, no higher basis should be applied in the Illinois district south and east of said line than in central territory.

(3) That class rates, governed by the contemporaneous western classification, be constructed upon a level not exceeding the general level of the interstate rates under which the traffic now moves between points in northwestern Illinois and points in Wisconsin,

Iowa, and Missouri and applied between points in the Illinois district on, north, and west of the Chicago-St. Louis line above described.

In order to cure the conflict of rates and ratings which would arise from the establishment of the Chicago-St. Louis line, it is suggested that the scale of rates which is recommended for application between points in the northwestern Illinois district, governed by the contemporaneous western classification, be applied on traffic moving from the northwestern Illinois district into the southeastern Illinois district; and that the Disque scale, governed by the contemporaneous official classification, when applied between points in the southeastern Illinois district, be applied on traffic moving from the southeastern into the northwestern Illinois district, subject to such exceptions and modifications as a nondiscriminatory rate adjustment may require.

In recommending this division of the Illinois district we have selected the line which approximates the demarcation between the western trunk lines and the lines which principally serve central territory. In the *C. F. A. Class Scale Case, supra*, we pointed out that the district lying north and west of the line from Chicago through Peoria and Alton to the Mississippi River is dominated by the western trunk lines and is not strictly a part of C. F. A. territory. The purpose is to remove discriminations against Indiana in the area in which they have been shown principally to exist and at the same time to avoid the creation of maladjustments and serious disturbances between the northwestern Illinois district and the bordering western states, which, the record shows, would follow the adoption of the carriers' plan.

It is apparent that wherever the line be drawn between the official and western territories there are difficulties to be overcome in the practical application of rates between competing localities. If the recommendations which we make are carried out, the traffic officials who do the work can, through the exercise of wise discretion, make such exceptions to the general adjustment as may be necessary to avoid hardships in particular cases.

The difficulties of the situation considered in this report show one of the most forceful illustrations of the advisability or necessity for uniformity in classifications, and it is manifest that until a more complete uniformity has been brought about many of the discriminations must continue to exist.

Different remedies or courses of procedure have suggested themselves. None was free from difficulties. Certain ones promise to cure the ills from which Indiana is suffering, but almost with certainty would inflict equal or greater ills upon other communities. The course which we have decided to recommend has its peculiar

difficulties. As in all these methods, much depends upon the exercise of sound judgment in the light of the concrete facts. To transfer the divisional line from the Indiana-Illinois line to a line between Chicago and St. Louis in itself, without the necessary accompanying changes, cures nothing. The border problems will remain. We believe they will be reduced in number and in seriousness under the operation of the plan we suggest. We believe that men who are thoroughly familiar with transportation conditions in this territory can make the readjustments without imposing undue hardships on any individual or community.

The acuteness of the situation in Indiana does not permit of temporizing with the Illinois classification. The Illinois commission has expressed its willingness to cooperate in working out a solution. Everybody connected with this proceeding seems to recognize that many things which now exist are not right and that they should be made right without delay.

Nothing in these recommendations should be construed as suggesting a substitution of line-haul for switching rates, or the reverse, in any territory or district; nor should any change be made in the defined or recognized limits of any terminal or switching district as a result of our conclusions in this proceeding.

COMMODITY RATES.

The changes in commodity rates proposed by the carriers were filed as exhibits under four lists: (1) articles on which they proposed to increase the carload commodity rates up to certain definitely related percentages of various class rates, as in effect in central territory; (2) articles on which they propose to increase the commodity rates to the same bases as are applied thereto in central territory, with details of specific rates upon many articles between many points; (3) articles on which they propose to increase the carload commodity rates by amounts equivalent to the 15 per cent advance, by adding 15 per cent to the rates in effect prior to the 25 per cent increase under General Order No. 28; (4) articles on which special changes are proposed. A fifth list names articles on which it is not proposed to make any changes in rates, viz: Agricultural limestone, sand, gravel, crushed stone, cement, coal, coke, grain, grain products, ice, iron ore, and water in carloads. However, the fifth list does not include all of the articles on which no changes in commodity rates are proposed. It is our understanding that no changes are proposed other than those specifically named in lists 1 to 4.

No testimony was offered with respect to a large number of articles named in those lists, and we are unable to make any recommendations

as to such articles. The purpose of the testimony offered as to a number of particular commodity rates was to show in an illustrative manner the general prevalence of undue prejudice against Indiana. It was suggested at the hearing that testimony should be adduced upon every important item in the classification and upon each of the articles moving on commodity rates. Such a course would have consumed too much time to make the results of the investigation of any practical value and everybody at the hearing appeared to realize this. The testimony was therefore confined to a showing of the general rate relationship between Indiana and the Illinois district.

However, we shall make recommendations as to special articles as to which there is some substantial evidence, omitting any detailed statement of facts.

ACIDS.

It is proposed to change the rates on acids in carloads, to the central territory basis of 90 per cent of fifth class, under exceptions to the official classification. The effect would be the doubling of the Illinois district rates. Sulphuric acid, a by-product derived from the gases liberated in the smelting of ores, is manufactured in vast quantities in Illinois. It is a waste product of low value. The principal consumption is in Chicago and East St. Louis. The single manufacturing plant in Indiana has the benefit of the Chicago rates to Illinois points. Only one consumer in Indiana complains of the present rates into Indiana. He should be placed upon a non-discriminatory basis. We do not recommend the changes proposed.

AGRICULTURAL IMPLEMENTS.

It is proposed to cancel commodity rates on agricultural implements other than hand, minimum weight 20,000 pounds, and to apply fifth-class rates, official classification, minimum weight 24,000 pounds.

No evidence was submitted other than comparison with fifth-class rates in central territory, to show that the commodity rates in the Illinois district are unduly low, and we do not recommend their cancellation.

BOOTS AND SHOES.

It is proposed to cancel the commodity rates on boots, shoes, and findings in less than carloads and apply the Disque scale, first class on boots and shoes and second class on findings, governed by the official classification. There appears to be no objection on the part of manufacturers in the Illinois district to these changes, with the exception of the rates to and from one point, where a comparatively new plant is located. It is recommended that these commodity rates be canceled.

With respect to the carload rates on boots and shoes and findings, to which they propose to apply the 15 per cent increase, there is no showing that manufacturers in Indiana are unduly prejudiced thereby, and we can not recommend that the proposed increase be made.

BOTTLES, GLASS, AND CULLETS.

The carriers propose to cancel the commodity rates on glass bottles and cullets in carloads, substituting the Disque scale and fifth class for glass bottles and sixth class for cullets, governed by the official classification. At the same time they propose to cancel existing commodity rates on glass bottles in Indiana. The rates in both states have been increased by the general percentages except that the Illinois rates were not increased 15 per cent. Shippers in both states oppose the cancellation of the commodity rates. No discrimination is complained of by the Indiana shippers and they do not seek any change in the present adjustment. We do not recommend the changes proposed.

BRICK.

It is proposed to increase the commodity rates on brick in the Illinois district by adding the 5 and 15 per cent advances, in addition to the advance of 40 cents per ton which was made under General Order No. 28. There is unanimity of opinion that these rates should be revised. The shippers of Indiana contend that the present rates in Indiana are unreasonable and should be reduced to the level of the Illinois district rates. The principal discrimination shown to exist is in favor of Danville, and it is shown that the Danville rates are lower than those in the Illinois district generally. Numerous illustrations are given to show that some Indiana rates are higher, and some lower for equal distances than in the Illinois district. All of these rates are brought in issue by a separate complaint under Docket No. 10733, which has not been heard. The Indiana shippers are anxious that some relief be afforded them, at least temporarily, pending the determination of the level of the rates in that proceeding.

It is recommended that the discrimination against the brick-producing points in Indiana near the Illinois boundary and in favor of Danville be temporarily adjusted, without increasing all of the Illinois district rates as proposed, pending the determination of the complaint under Docket No. 10733.

CANNED GOODS.

It is proposed to cancel carload commodity rates on canned goods, minimum weight 30,000 pounds, and substitute fifth-class rates, minimum weight 36,000 pounds under the Disque scale and official classification.

The record indicates that lower rates applicable in the Illinois district subject Indiana shippers to undue prejudice in shipping into Illinois. The discrimination should be removed. However, we are not prepared on the showing made to recommend the cancellation of the commodity rates.

CORN STARCH.

It is proposed to advance the rates on corn starch in carloads by adding the 15 per cent increase. No discrimination was shown to exist against Indiana. A shipper at Decatur, Ill., contends that the article should be accorded grain-products rates in Illinois, such as apply in central territory, and expresses the opinion that the classification ratings on this commodity for carloads and less than carloads should be made uniform. Upon this record we are not prepared to recommend the increases proposed.

EGG CASES AND FILLERS.

It is proposed to increase the commodity rates on egg-case fillers, and egg cases, wooden, filled with egg-case fillers, k. d., 15 per cent

These commodities are of low value and are shipped to packing points throughout the country for use as containers in subsequent movements. Rates between points in the Illinois district are lower than rates from points in Indiana to points in Illinois for approximately equal distances. There are, however, proportional commodity rates from Vincennes, Ind., one of the principal points of production in Indiana, to points in Illinois and to Mississippi River crossings which may be used in connection with rates to points in Iowa and Missouri. There are also commodity rates from points in Iowa to points in Illinois, and a change in the rates in Illinois without a corresponding revision in rates from or to points outside the state would place Illinois producers under a disadvantage.

The record does not establish the propriety of the increases in the commodity rates on these articles, and we do not recommend that they be increased, but in any revision of commodity rates which may be made these articles should be given consideration.

FRUIT JARS.

Fruit jars move on commodity rates applicable to glass bottles in the Illinois district. As stated above, it is proposed to cancel the commodity rates on glass bottles. As a result fruit jars would be changed to the basis of fifth class under the Disque scale governed by the official classification. The principal manufacturer in Indiana, located at Muncie, shows that the present rates in the Illinois district give undue preference to a competitor located at Hillsboro, Ill.

It is recommended that the discrimination between these points be removed.

FURNITURE.

It is proposed to cancel the commodity rates on furniture of several descriptions in carloads and to apply class rates under the Disque scale and the official classification.

Rockford is said to be the principal manufacturing point in Illinois and Evansville, Ind., its principal competitor. In some instances rates from points in Indiana to points in Illinois are higher than rates applying between points in the Illinois district. It is urged by Illinois manufacturers that the principal market for furniture is east of the Indiana-Illinois state line and that to this territory rates from Rockford are relatively high. Rates on lumber, constituting the principal raw material, are higher from the south to Rockford than to points in Indiana. Commodity rates which are in effect from Rockford apply principally to distributing points, and there are also commodity rates from Evansville to East St. Louis and Indiana points and from manufacturing points in Ohio, Indiana, and Michigan to distributing points in Illinois.

Although some revision of commodity rates on furniture is apparently desirable, the cancellation of commodity rates in the Illinois district would unduly change the relation of rates between manufacturing points, and upon this record we do not recommend the changes proposed.

IRON AND STEEL.

It is proposed to add the 15 per cent increase to the carload commodity rates on iron and steel, including pig iron, articles taking the same rates, scrap iron and steel, cast-iron pipe, wire rods, etc. On iron and steel articles, manufactured, they propose to cancel the commodity rates in the Illinois district and substitute fifth class in carloads and fourth class in less than carloads, under the Disque scale and the official classification. Shippers in Indiana have been shown to be unduly prejudiced by the present structure, and they are in agreement with the shippers in the Illinois district as to the method in which their rates should be corrected. We recommend that the rates on manufactured iron and steel articles be revised by reverting to the basis in effect prior to October 26, 1914, and adding the equivalent of the 5, 15, and 25 per cent increases, as agreed by the shippers, with such other modifications as circumstances may require. With respect to rates on iron and steel, the record is not sufficient to warrant any recommendation.

LIME.

It is proposed to increase the rates on lime in carloads from the Illinois district producing points by adding the 15 per cent advance to the advance of 1.5 cents per 100 pounds made under General

Order No. 28. Practically all of the producers in Indiana and Illinois, and in Mosher and St. Genevieve, Mo., assent to the proposals in order to restore the relationship of rates which was disturbed when the 15 per cent advance was added to the rates in Indiana and not in Illinois or the surrounding states. However, they ask that the advance be applied uniformly from producing points in Missouri, Iowa, and Wisconsin in order to avoid discriminations against Illinois points.

It is recommended that the changes proposed on lime be made.

LIVE STOCK.

As to live stock the carriers propose to eliminate commodity rates and substitute generally the Disque scale, following the changes approved in the *Eastern Live Stock Case*, 36 I. C. C., 675, plus the 15 and 25 per cent advances, except on horses and mules, which they propose to advance to second class, under exceptions to the official classification. The percentage of the increases in particular rates would be large. The testimony in proof of undue prejudice against Indiana was centered upon the Indianapolis market, a situation which is before us in *Indianapolis Chamber of Commerce* v. *C., C., C. & St. L. Ry. Co.*, No. 9308, particularly as to minimum weights. We therefore shall not consider in detail the proposed changes in rates on live stock in the instant investigation and we can not recommend that the proposals be made effective.

LUMBER.

It is proposed to cancel the Illinois maximum scale on lumber and articles taking lumber rates, or arbitraries higher, and to apply sixth class, official classification, subject to specific commodity rates from the gateways. Where specific commodity rates are published from origin to destination, it is proposed to advance the rates in effect June 24, 1918, 1 cent per 100 pounds under the decision in the *Fifteen Per Cent Case*, plus 25 per cent, subject to a maximum advance of 5 cents per 100 pounds, under General Order No. 28.

The rates on lumber applicable between points within the state of Illinois are lower in many instances than the rates applicable between points in Indiana, especially where the class basis applies in Indiana, which subjects some Indiana dealers to disadvantage, which is not sufficiently developed on the record to warrant a recommendation.

MACHINERY.

It is proposed to cancel commodity rates on machinery, classified sixth class in Illinois classification, minimum weight 30,000 pounds,

and to apply official classification, fifth class, minimum weight 24,000 pounds.

No actual prejudice against shippers of Indiana was shown, and the record is not sufficient to warrant a recommendation that the commodity rates be canceled.

PACKING-HOUSE PRODUCTS AND FRESH MEATS.

The proposal of the carriers as to fresh meats and packing-house products, as amended at the hearing, is to advance the commodity rates so as to apply the 15 per cent increase throughout the state, with the exception of the specific proposal to increase the rate from East St. Louis to Chicago on packing-house products from 13 cents to 16.5 cents. The testimony offered with respect to these commodities was insufficient to warrant any recommendation; and it is understood that the carriers' proposal and the amendment were withdrawn.

PETROLEUM AND PETROLEUM PRODUCTS.

It is proposed to cancel commodity rates on petroleum oil and its products, in carloads, between points in Illinois, and to apply 90 per cent of fifth-class rates under the Disque scale and the official classification, in effect May 25, 1918, plus 4.5 cents per 100 pounds under General Order No. 28, subject to the present fifth-class rates as maxima.

Although rates on petroleum and its products in the Illinois district are on a lower level than in central territory, no actual undue prejudice against refiners or shippers in Indiana is shown. nor are the rates in the Illinois district shown to be unduly low or to burden other traffic. The competition which Illinois refineries have to meet is from the midcontinent field, principally in Oklahoma, and if the rates were made on the proposed basis, the relative adjustment would be disrupted.

The record does not warrant a recommendation that the commodity rates in the Illinois district be canceled or changed.

PREPARED ROOFING.

It is proposed to cancel carload commodity rates on prepared roofing, asphalt shingles, and related articles, and to apply 90 per cent of sixth-class rates.

The rates between points in the Illinois district are lower than the rates which apply in central territory. Manufacturers in Illinois, however, meet competition from points north thereof and west of the Mississippi River, which is a condition which must reasonably be considered in determining the proper adjustment of rates, and

the proposed basis would work a serious disadvantage in meeting such competition from points considerably more distant.

Upon this record we can not recommend the cancellation of commodity rates on prepared roofing, etc., between points in the Illinois district.

JUNK AND SCRAP METALS.

It is proposed to increase rates on junk and scrap metals in effect June 24, 1918, in line with advances in the *Fifteen Per Cent Case*, plus 25 per cent under General Order No. 28.

The record shows that the rates in Indiana are not on a consistent basis; that in some instances higher rates apply in Indiana than in the Illinois district; and that in others the rates from Indiana points to Illinois points are on a lower basis than between points in the Illinois district. The record indicates that some revision of the rates is probably necessary both in the Illinois district and in Indiana, but does not justify a recommendation that the increases proposed should be made.

SHELLS, CRUSHED.

It is proposed to cancel the commodity rates on crushed shells and substitute sixth-class rates under the Disque scale and the official classification. The article is rated tenth class in the Illinois and class E in the western classifications. The increases proposed would result in rates from Muscatine, Iowa, to St. Louis, Mo., higher than from New Orleans, La., to St. Louis; and from Muscatine to Chicago higher than from Washington, Iowa, to Chicago. The latter is an illustration of the many fourth section departures which would result from the changes proposed. No competition is shown to exist between the Mississippi River cities and points in Indiana, and the Indiana producers are not complaining of the adjustment. They distribute principally within Indiana.

We do not recommend the changes proposed on crushed shells in carloads.

STOVES.

There is no specific reference to stoves in the list of proposed changes, but since the parties have proceeded upon the apparent assumption that it is proposed to cancel commodity rates on stoves and related articles, in carloads, between points in the Illinois district and to substitute therefor fifth-class rates, subject to official classification, we shall consider them.

Quincy, Ill., Detroit, Mich., and Toledo, Ohio, are large centers for the manufacture of stoves; there are commodity rates from Detroit and Toledo to points in Illinois as well as Indiana and Ohio, and the cancellation of commodity rates from the Illinois district

points would give an advantage to manufacturers at Detroit and Toledo.

The rates applying in central territory were increased 15 per cent, but such advance was not applied within the Illinois district.

With the exception of the showing that there are commodity rates applying between points in the Illinois district and no commodity rates from Indiana points, the record does not establish that there is any undue prejudice against Indiana manufacturers in the rates for the transportation of stoves in carloads.

While some increase in certain commodity rates on stoves applying within the Illinois district would seem to be proper, the record is not sufficient to warrant a recommendation that they be canceled.

With respect to a relatively small number of articles, the commodity rates in the Illinois district are shown to be unduly prejudicial against Indiana; but, upon this record as a whole, the same can not be said with respect to the general commodity rate structure throughout this district. Each commodity should be carefully studied and dealt with in the light of its own peculiar facts and circumstances. It is recommended that a review of particular commodity rate structures be made in order to remove discriminations which now exist or may arise from any readjustments growing out of our recommendations in this proceeding.

APPENDIX No. 1.

Comparing official and Illinois classifications.

LESS THAN CARLOADS.

Ratings.	Number of ratings.	Illinois classification.		
		Higher.	Same.	Lower.
4 times 1	40	.....	14	26
3 times 1	101	8	50	43
2½ times 1	44	12	6	26
D-1	606	27	274	305
1½ times 1	634	92	221	321
1¼ times 1	73	12	.....	61
1	2,854	223	1,952	679
2	2,216	505	1,152	559
R-25	392	177	.....	215
3	2,343	550	1,183	610
R-26	435	125	.....	310
4	1,021	178	811	32
5	52	15	37	.....
Total	10,841	1,924	5,700	3,217
Per cent	100	17.75	52.58	29.67

CARLOADS.

D-1	1	.....	1	.....
1½ of 1	1	1	.....	.....
100 per cent of 1	4	.....	1	3
1	51	2	14	35
2	322	5	110	207
R-25	48	1	.....	47
3	405	19	227	159
R-26	124	45	.....	79
4	885	153	423	309
5	2,286	364	1,202	720
6	509	119	73	317
Total	4,636	709	2,051	1,876
Per cent	100	15.29	44.24	40.47
Grand total	15,477	2,633	7,751	5,093
Per cent	100	17	50.08	32.92

APPENDIX No. 2.

Comparison of Illinois and C. F. A. scales, classes 1 to 4.

Distance (miles).	First class.			Second class.			Third class.			Fourth class.			Total, four classes.		
	Illinois rate.	C. F. A. rate.	Per cent C. F. A. of Illinois.	Illinois rate.	C. F. A. rate.	Per cent C. F. A. of Illinois.	Illinois rate.	C. F. A. rate.	Per cent C. F. A. of Illinois.	Illinois rate.	C. F. A. rate.	Per cent C. F. A. of Illinois.	Illinois rate.	C. F. A. rate.	Per cent C. F. A. of Illinois.
5	25	25	100	21	21.5	102	17.5	17	97	15	12.5	83	78.5	76	[illegible]
10	25	25	100	21	21.5	102	17.5	17	97	15	12.5	83	78.5	76	[illegible]
20	25	27.5	110	21	23.5	112	17.5	18.5	105	15	14	93	78.5	83.5	[illegible]
30	25	30	120	21	25.5	121	17.5	20	114	15	15	100	78.5	90.5	[illegible]
40	26.5	33	124	21.5	28	130	18	22	122	15	16.5	110	81	99.5	[illegible]
50	29	36.5	126	23.5	31	132	20	24.5	123	15	18.5	123	87.5	110.5	[illegible]
75	34	39.5	116	26.5	33.5	117	23.5	26.5	112	16.5	20	121	100.5	119.5	[illegible]
100	38.5	43	112	31	36.5	118	26	29	116	19	21.5	113	113.5	130	[illegible]
150	45	50.5	112	36	43	119	28	34	121	22.5	26.5	118	131.5	154	[illegible]
200	49	57.5	117	39.5	49	124	30.5	38.5	126	24.5	29	118	143.5	174	[illegible]
250	53	61.5	118	42.5	53.5	123	33	41	124	26.5	31	117	154	188	[illegible]
350	54	63	116	44	53.5	122	34.5	42	122	27.5	31.5	116	160	190	[illegible]
300	55.5	65	117	45	55.5	123	35.5	43.5	122	26.5	32.5	114	164.5	196.5	[illegible]
400	60	72	120	50	61	122	39.5	48	121	31	36	116	180.5	217	[illegible]
500	62.5	79.5	127	53	67.5	129	42	53.5	127	33	40	121	189.5	240.5	[illegible]
Average	.....	.....	114	.....	.....	121	.....	.....	119	.....	.....	113	.....	.....	118

No. 8635.

CAPE GIRARDEAU PORTLAND CEMENT COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted November 9, 1918. Decided October 29, 1919.

Reparation awarded on various carload shipments of cement from Cape Girardeau, Mo., to certain points in southern Illinois.

George B. Webster, *John R. Walker*, and *Claude W. Owen* for complainant.

Thomas Bond, *C. P. Stewart*, *R. Walton Moore*, and *Willis H. Fowle* for defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of cement at Cape Girardeau, Mo. By complaint filed February 3, 1916, it alleges that the combination rates assessed on various carloads of cement shipped from Cape Girardeau to certain points on defendants' lines in southern Illinois between March 25 and October 30, 1915, both inclusive, were unreasonable and unduly prejudicial. Reparation is asked. Subsequent to the hearing a supplemental complaint was filed, making the Director General of Railroads a party defendant. No further hearing was asked or had.

In *Cape Girardeau Portland Cement Co.* v. *St. L. & S. F. R. R. Co.*, 35 I. C. C., 109, decided July 1, 1915, we found that the combination rates applicable over the defendants' lines on cement, in carloads, from Cape Girardeau to the destinations here in question and to other points in southern Illinois, including Eldorado, were unreasonable and unjustly discriminatory and the defendants were required to establish on or before November 1, 1915, joint rates not in excess of 78 per cent of the combination rates from and to the same points in effect when the case was decided. All but nine of the shipments on which reparation is asked moved over the lines of defendants named in that proceeding. The excepted shipments moved over the lines of said defendants to Eldorado and thence to destina-

tion over the line of the Southern Illinois Railway & Power Company, not a party defendant in the former proceeding, the rates assessed being made on the Eldorado combination. Complainant bases its claim for reparation upon the finding of unreasonableness in the former proceeding. The evidence introduced in its behalf in the present case shows that the charges on the shipments on which reparation is asked were paid and borne by it, and that it suffered an actual loss on each shipment in the amount by which the charges collected exceeded those which would have accrued under the prescribed rates.

No evidence was offered for defendants, who rely upon the rulings and previous findings of the Commission. They urge, among other things, that in the former proceeding the rates assailed were not found unreasonable *per se*, but relatively, and that more substantial proof of damage is required than is here presented; and that in any event no reparation should be awarded as it was not prayed for in the former proceeding as required by our Rules of Practice.

These contentions are not well founded. All but one of the shipments moved after the date of submission of the case, and that one was made after hearing and filing of the briefs. Under the circumstances, we think this case comes within the exception of that part of rule III of the Rules of Practice reading:

> Except under unusual circumstances, and for good cause shown, reparation will not be awarded unless specifically prayed for in the complaint or in an amendment thereto filed before the submission of the case.

While we made no specific finding as to the unreasonableness of the rates in the past, our report shows that it was based upon, and defendants' evidence in justification of the rates assailed was limited to, facts which existed at the time the shipments moved and prior thereto. We can not agree that the rates assailed were not found unreasonable *per se*, for in our report we said that "the combination rates assailed are clearly unjustly discriminatory and unreasonable." It is clear from an examination of the record that the finding of unreasonableness was made advisedly, and we now see no reason to doubt the soundness thereof. We are convinced that the rates assailed, including the rate to Eldorado assessed on the nine shipments to destinations on the line of the Southern Illinois Railway & Power Company, were unreasonable and so find.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges assessed and those that would have accrued on the basis of the rates found reasonable in *Cape Girardeau Portland Cement Co.* v. *St. L. & S. F. R. R. Co.*, *supra;* and that it is entitled to reparation, with interest. The

exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

HALL, *Commissioner*, dissenting:

Complainant alleges that the combination rates assessed on its shipments made between March 25 and October 30, 1915, were unreasonable and unduly prejudicial. No evidence of or bearing on the reasonableness of rates was introduced in this case. Complainant relies upon our finding of unreasonableness in *Cape Girardeau Portland Cement Co.* v. *St. L. & S. F. R. R. Co.*, 35 I. C. C., 109, decided July 1, 1915. Our report there dealt with four complaints filed by this complainant in July and August, 1914, assailing rates on cement from Cape Girardeau to points in southern Arkansas, Louisiana, Mississippi, western Kentucky, western Tennessee, and southern Illinois, alleging that they were unreasonable and unjustly discriminatory in comparison with rates maintained from specified competing points. Of these complaints that docketed as Sub-No. 2 assailed the combination rates to points in southern Illinois as compared with the rates from St. Louis and Hannibal, Mo., La Salle, Ill., and Buffington and Mitchell, Ind., and was discussed on pages 123–127 of that report.

Upon argument in that case counsel for complainant said, speaking of rates to the southwest:

> But we are not emphasizing the unreasonableness of the rates. We are not asking the Commission to prescribe a scale of rates from Cape Girardeau, or from all those points in the southwest, because we do not feel the Commission has the data before it to prescribe any such basis, nor do we feel we are able to give the Commission the data that would enable it to prescribe a rate or a scale of rates for this entire territory.
>
> This is a very large question, and it seems to us, in such an undertaking, that all of the cement plants west of the Mississippi River should be heard, and that the whole question of the commercial and transportation features of this commodity should be gone into; so we are asking now for a relationship in rates.

and again, speaking of the rates to southern Illinois:

> We want joint through rates which are less than the sum of the locals, and which will bear a proper relationship to the rates obtaining from the other points that are indicated on this map.

No reparation was sought in Sub-No. 2. Complainant manufactures cement at Gulf Junction, Mo., 2 miles south of Cape Girardeau on the Frisco. A joint rate of 7 cents was maintained from Gulf Junction to Murphysboro, Ill., on the Iron Mountain and Mobile &

Ohio, which was 78 per cent of the combination rate of 8.9 cents from Cape Girardeau to Murphysboro. That also was the percentage relation of the joint rate from St. Louis and the combination rate from Cape Girardeau to Herrin, Ill. The hauls from Cape Girardeau were three-line hauls as against one and two line hauls from Hannibal, La Salle, Mitchell, and St. Louis. We made no finding as to rates in the past. We said, "The combination rates assailed are clearly unjustly discriminatory and unreasonable. Cape Girardeau is entitled to through routes and joint rates to all of the points involved in southern Illinois," and we required the defendant carriers to establish joint rates from Cape Girardeau to points in a designated portion of southern Illinois not in excess of 78 per cent of the then combination rates. Our order to that effect was made effective November 1, 1915.

All but one of the shipments on which reparation is now asked in the present case moved after the date of submission of the former case, in which our report is now construed as finding that the combination rates were unreasonable in and of themselves. What construction is to be placed upon the terms "unjustly discriminatory and unreasonable"? "Unjust discrimination" is defined and declared unlawful in section 2 of the act to regulate commerce. No violation of that section has been made to appear. The distinction in statutory terminology between sections 2 and 3 of the act has not always been observed in proceedings before us. Section 3 declares it unlawful for any common carrier subject to the act to give any "undue or unreasonable" preference or advantage to any particular person, locality, or description of traffic, or to subject any particular person, locality, or description of traffic to any "undue or unreasonable" prejudice or disadvantage.

We did not require the combination rates to be reduced to a reasonable maximum. We found Cape Girardeau entitled to through routes and *joint* rates, and required the carriers to establish *joint* rates not in excess of 78 per cent of the then combination rates. If we had made that a percentage of the contemporaneous combination rates our finding and requirement would have been under section 3 beyond question. In view of the position taken by counsel for complainant there was reason for confining our percentage requirement to the then existing combination, and this caution has been abundantly justified by our subsequent study and the subsequent history of cement rates.

It seems to me entirely plain that we were dealing, as we said and as complainant's counsel said, with rate relationships. The majority report now says:

> We can not agree that the rates assailed were not found unreasonable *per se*, for in our report we said that "the combination rates assailed are clearly un-

justly discriminatory and unreasonable." It is clear from an examination of the record that the finding of unreasonableness was made advisedly and we now see no reason to doubt the soundness thereof.

In our report we cited rates from complainant's mill which yielded 1.81 cents and 1.53 cents per ton-mile for 77 miles and 98 miles, respectively, as compared with a yield of 6.28 mills per ton-mile for an average haul of 98 miles in the territory concerned in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, and found, as stated, that the rates in controversy were unjustly discriminatory and unreasonable.

But the ton-mile yield of 1.81 cents here cited is slightly less than the yield of the joint rate required by that report to be established from Cape Girardeau to Murphysboro, 75 miles, and by the same report and order we prescribed a joint rate to Fort Gage, 79 miles, which would yield 2.23 cents per ton-mile. Another rate there prescribed was 7.3 cents to Carbondale, 97 miles, yielding 1.50 cents per ton-mile. It is manifest that the ton-mile revenue was not a controlling factor, if indeed a contributing factor, in the conclusion reached.

We properly required the establishment of through routes and joint rates from Cape Girardeau, although it is not altogether apparent why complainant, having the joint rate from its plant, needed another joint rate from a point 2 miles from the plant. We properly required the joint rates to be somewhat less than the aggregate of the intermediates. We properly allowed the carriers a reasonable time within which to establish these joint rates. In the absence of any evidence in the former record or in this that the combination rates obtaining in the meantime were unreasonable in and of themselves or that complainant has been prejudiced or damaged by their application I do not find that it has established its claim for reparation; and dissent from the award made by the majority report.

No. 10238.

NEW BEDFORD BOARD OF COMMERCE
v.
DIRECTOR GENERAL AND NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Submitted June 5, 1919. Decided October 24, 1919.

Rates for the transportation of coal in carloads from wharves at New Bedford, Mass., to the plant of the New Bedford Extractor Company, at New Bedford, in effect on and after June 25, 1918, found unreasonable. Rates which shall not exceed by more than 5 cents per long ton the rates contemporaneously charged on coal switched from the wharves to points within the New Bedford switching district prescribed as a reasonable basis for the future. Reparation awarded.

E. F. Rowe and *Mason Manghum* for complainant.

F. A. Farnham for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

DANIELS, *Commissioner:*

This complaint, filed August 21, 1918, by an incorporated association representing New Bedford, Mass., interests, for and in behalf of the New Bedford Extractor Company, a corporation engaged in the reduction of garbage, and hereinafter referred to as the complainant, attacks the rate for the transportation of coal, in carloads, from the wharves at New Bedford to the complainant's plant. A report by the examiner who heard the testimony was served on the parties, exceptions thereto were filed by complainant, and oral argument has been had thereon. The coal originates in Virginia and West Virginia and is shipped by rail and ocean to New Bedford, where it is unloaded from vessels to cars at the docks of the fuel companies and hauled by the New York, New Haven & Hartford Railroad Company, hereinafter called the defendant, to point of unloading. Defendant's main line from New Bedford extends northward toward Boston, but at a point about 1¼ miles from the dock a spur or branch, known as the Watuppa branch, extends westward to Watuppa, a station within the corporate limits of the city of Fall River, Mass. Complainant's plant is situated on the branch, about 1¼ miles from the junction with the main line, and

about 2¾ miles from the dock. It is within the city limits of New Bedford, but about 3,100 feet beyond the switching limits. A blanket rate is applied on coal from New Bedford to all points on the Watuppa branch beyond the New Bedford switching limits. Prior to July 1, 1917, this rate was 35 cents per long ton. On that date it was increased to 40 cents, in connection with general increases on bituminous coal in the east, and on June 25, 1918, was further increased to 70 cents per long ton, under General Order No. 28 of the Director General of Railroads. Effective October 21, 1918, the rate was reduced to the present basis of 55 cents per long ton, under authority of the Director General. The complaint alleges in substance that these rates as applied to complainant's shipments were and are unreasonable, unjustly discriminatory, and unduly prejudicial in comparison with the rate contemporaneously charged for switching coal from the wharves to points within the New Bedford switching district. The latter rate, prior to June 25, 1918, was 30 cents per long ton. On that date it was increased by 30 cents under General Order No. 28, but was reduced, effective December 7, 1918. to 40 cents per long ton, which is the present rate. Complainant's contention is that its plant should be given the New Bedford switching rate. Reparation is asked.

The industry nearest complainant's plant is the factory of the Continental Wood Screw Company, which is about 3,100 feet distant and an equal distance from the junction of the Watuppa branch with the main line. It is served by defendant's switching engines and is given the switching rates. The New Bedford switching district is not defined by tariff nor was its boundary on the Watuppa branch marked in any manner at the time of hearing, but according to defendant's testimony it has long been considered to be approximately at the present location of the screw factory, which has been built only about a year. A tariff should inform the public definitely and clearly as to the application of the rates named therein. If it fails to give the territorial boundaries of a switching district or to specify the industries to which rates apply, the switching limits should at least be plainly indicated by appropriate markings. Defendant should at once remedy the defect at New Bedford, if it has not already done so.

The grade ascends sharply from the main line to and just beyond the screw factory, and defendant asserts that the switching to and from that industry can be more economically performed by switching engines than by road engines, owing to the difficulty of stopping trains on the grade. It also makes the point that the switching district necessarily includes some trackage on the Watuppa branch, on which the switching engines and their loads may enter for the pur-

pose of clearing the main line. To the westward, beyond the screw factory, the grade again descends, and complainant's plant is in a depression between two ascending grades, which the road trains find some difficulty in surmounting. In view of the latter circumstance, complainant reasons that its switching also could be performed more economically by switching engines than by road engines. The average loading of complainant's coal is about 40 tons per car. In volume the shipments average about five carloads per month. The cars in which coal is received are returned empty.

Defendant alleges that the rates under attack are less than could reasonably be charged. It states that the rate to Watuppa, which also applied at intermediate points, including complainant's plant, was fixed to meet the competition of water-borne coal delivered by truck from the docks at Fall River. It also points to the fact that the rate on coal from New Bedford to Acushnet, a point on the main line about the same distance from the wharves as is complainant's plant, is 75 cents per long ton, as compared with complainant's rate of 55 cents. Acushnet is also within the New Bedford city limits, but beyond the switching limits. The comparison loses force when it is stated that the rate to Acushnet is a blanket rate, applying over a distance of more than 20 miles from New Bedford. However, it does not appear that there are any shipments of coal from the wharves either to Acushnet or to the plant of the Continental Wood Screw Company. According to a statement filed subsequent to the hearing, no coal whatever, other than complainant's, was switched from the wharves to any point in New Bedford during the year 1917. Complainant has not shown that it has been damaged by reason of the alleged undue prejudice.

Based upon loading of 40 tons, the various rates charged complainant during the period involved yielded revenue of $14, $16, $28, and $22 per car. Similar shipments delivered within the switching district would have earned, under the successive rates in effect during the same period, $12, $24, and $16 per car.

Carriers are within their rights in establishing reasonable territorial limits for the operation of their switching engines and in giving industries within those limits the benefit of any resulting economies. Charges to points without the switching limits may not only be higher for the greater distance, but for the different character of service, where more expensive. Such charges should not, however, exceed what is sufficient properly to recompense the carrier for the extra service rendered. There have been several cases before the Commission in which we have considered situations similar to the one now before us. In *Gilmore* v. *C. & N. W. Ry. Co.*, 25 I. C. C., 403, we held that rates on coal to Ravenswood, Ill., a point located

about 1½ miles outside the switching limits of Chicago, should not exceed by more than 5 cents per ton the rates to Rose Hill, a point just inside the switching limits. A similar finding was made in *Switching Charges on Coal and Coke*, 32 I. C. C., 444, as to points located 2 and 2.7 miles outside the Chicago switching district.

Upon consideration of all the facts and circumstances involved, we are of opinion and find that the rate maintained by defendants on coal from the wharves at New Bedford to complainant's plant, subsequent to June 24, 1918, has been unreasonable to the extent that it has exceeded 45 cents per long ton. This is 5 cents per long ton higher than the rate established by the Director General on December 7, 1918, as a proper charge for switching coal from the wharves to points within the switching district. We are further of opinion and find that rates on coal from the wharves at New Bedford to complainant's plant should not for the future exceed by more than 5 cents per long ton the rates contemporaneously maintained by defendants for switching coal from the wharves to points within the switching district. The movement of coal from the wharves to complainant's plant is wholly within the state of Massachusetts, and the record does not contain sufficient information with regard to the water movement of the coal to enable us to determine our jurisdiction over the movements prior to the time we were given jurisdiction under the federal control act. As before stated, the rates attacked had been increased by order of the Director General on June 25, 1918, and under the federal control act the rates so initiated are subject to our jurisdiction. We have, therefore, confined our finding to the period subsequent to June 24, 1918. A statement of the shipments made on and after June 25, 1918, and up to August 17, 1918, the date of filing of the complaint, together with the dates on which payment of charges was made, should be submitted in accordance with rule V of our Rules of Practice. Upon receipt of such a statement the entry of a reparation order will be considered.

No. 10320.

SWIFT & COMPANY

v.

DIRECTOR GENERAL.

Submitted March 28, 1919. Decided October 21, 1919.

Rate of 15.5 cents per 100 pounds on stable manure, in carloads, from Camp Sherman, Ohio, to Parma, Ohio, found to have been unreasonable to the extent that it exceeded 12 cents per 100 pounds. Reparation awarded.

R. D. Rynder for complainant.

R. Walton Moore, *A. P. Humburg*, *Morrison R. Waite*, and *William A. Eggers* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed November 11, 1918, complainant alleges that the rate of 15.5 cents per 100 pounds charged for the transportation of 43 carloads of manure between June 25, 1918, and September 16, 1918, inclusive, from Camp Sherman, Ohio, to Parma, Ohio, was unjust and unreasonable, in violation of section 10 of the federal control act, to the extent that it exceeded 12 cents per 100 pounds; and prays reparation accordingly. Rates hereinafter stated are in cents per 100 pounds.

Camp Sherman is an army cantonment located within the switching limits of Chillicothe, Ohio, served by the Baltimore & Ohio Railroad, and was opened in September, 1917. Shortly thereafter the authorities at the camp agreed, in order to dispose of the accumulating stable manure, which could not be used locally, to load it on cars gratis. There were no commodity rates for its transportation from Camp Sherman, and in the absence thereof the sixth-class rates were applicable. The sixth-class rate over the Baltimore & Ohio to Parma, which is within the switching limits of Cleveland, Ohio, was 12.5 cents, minimum 30,000 pounds. While stable manure generally moves in central freight association territory in carloads at rates lower than sixth class it was thought that, as the only cost to the purchaser would be the freight charges, it would move at full sixth-class rates. The effort to stimulate a general movement on that basis failing,

commodity rates based on 60 per cent of the sixth-class rates were established November 21, 1917, to near-by points on the Baltimore & Ohio, the farthest point being Zanesville, Ohio, a distance of 131 miles by way of Washington Court House, and 184 miles by way of Belfre, Ohio. The distance from Camp Sherman to Parma over the intrastate line of the Baltimore & Ohio by way of Washington Court House, Newark, and Willard is 277 miles. It is explained that 60 per cent of the sixth-class rate was applied for the reason that it was the basis applicable on agricultural limestone, which is also used to improve the soil.

On June 8, 1918, complainant contracted to purchase all of the manure produced at Camp Sherman for a period of one year at a price of $10 per car, f. o. b. point of origin. Prior thereto, on May 17, 1918, and on several later occasions, it asked for the establishment of a commodity rate on manure in carloads from Camp Sherman to Parma lower than the sixth-class rate of 12.5 cents, insisting that the application of the sixth-class rate on this traffic was unreasonable.

On June 25, 1918, following General Order No. 28 of the Director General of Railroads, the sixth-class rate was increased 25 per cent to 15.5 cents. After some correspondence, on September 16, 1918, the present commodity rate of 12 cents, minimum 40,000 pounds, was established. This rate, which applies locally over the Baltimore & Ohio either by way of its intrastate route or through Parkersburg, W. Va., was published in a tariff filed on short notice, under authority of the Director General, and it is admitted that there was considerable delay in establishing it.

The shipments were delivered to the Baltimore & Ohio at Camp Sherman and moved from that place to Parma during the period from June 25, 1918, to September 13, 1918. Under General Order No. 1 of the Director General the shipper had no control over the routing. Twenty-three of the shipments moved entirely over the Baltimore & Ohio through Parkersburg, W. Va. Ten moved over the Baltimore & Ohio, Norfolk & Western, and Pennsylvania railroads to Warwick, Ohio, and Baltimore & Ohio beyond, the movement being entirely within the state of Ohio. The exact route over which the remaining ten shipments moved is not shown, but in each instance the Baltimore & Ohio was the initial and delivering carrier. Charges on all of the shipments were collected at the applicable sixth-class rate of 15.5 cents. The distance via Parkersburg is 345 miles.

The rate complained of, although applicable to intrastate as well as to interstate traffic, was initiated by the President through the Director General of Railroads, and by section 10 of the federal control act the authority to determine upon complaint the justness and rea-

sonableness of such rate and to award reparation on shipments moving thereunder is vested in this Commission. *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 55 I. C. C., 280.

Based on the average weight of complainant's shipments, 76,661 pounds, the revenue accruing under the rate of 15.5 cents was $118.82 per car, or 42.9 cents per car-mile for the shorter distance of 277 miles, and 34.4 cents per car-mile for a distance of 345 miles via Parkersburg. Based on a rate of 12 cents, the revenue accruing would be $91.99 per car, or 33.2 cents per car-mile for 277 miles and 26.7 cents per car-mile for 345 miles. Exhibits offered in evidence by complainant indicate that from and to various points in central freight association territory the average rate on manure, in carloads, is approximately 43 per cent of sixth class, and the revenue accruing thereunder, based on the average weight of complainant's shipments, would be $53.50 per car, or 19 cents per car-mile; that the rates for distances from 283 miles to 490 miles vary from 5 to 9.5 cents, the earnings thereunder, based on the average weight of complainant's shipments, ranging from $38.33 to $72.83 per car, from 13.5 to 14.9 cents per car-mile.

The defendant's witness concedes that under normal conditions, aside from the question of car supply, taking into consideration the rates on manure elsewhere, a rate from Camp Sherman to Parma lower than sixth class, and probably less than 12 cents, might have been established; but he observes that there was a car shortage and intimates that the Baltimore & Ohio's commodity rates less than the sixth-class rates were originally confined to short distances in order that the cars used could be promptly returned for further loading. It was testified that because of complainant's failure promptly to unload some of the cars at Parma an embargo was issued against shipments from Camp Sherman to that place.

Sixty per cent of the sixth-class rate of 12.5 cents in effect prior to June 25, 1918, would be 7.5 cents, and with the 25 per cent increase under General Order No. 28 would be 9.5 cents, or 2.5 cents less than the commodity rate subsequently established and now in effect.

We find that the rate complained of was unreasonable to the extent that it exceeded 12 cents per 100 pounds, minimum 40,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; and that it was damaged thereby, and is entitled to reparation, in the difference between the charges paid and those that would have accrued at the rate herein found reasonable, with interest. Upon the present record we are unable to determine the exact amount of reparation due. The complainant should therefore prepare a statement showing the details of the

shipments in accordance with rule V of the Rules of Practice, specifying the dates on which charges were paid, which statement should be presented to the defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10283.

ASSOCIATED COOPERAGE INDUSTRIES OF AMERICA
v.
DIRECTOR GENERAL, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

Submitted March 24, 1919. Decided October 16, 1919.

Rates and minima on cooperage stock, in carloads, from certain eastern defined territory to California terminals and other western points not found unreasonable, unduly prejudicial, or otherwise in violation of the act to regulate commerce. Complaint dismissed.

George B. Webster for complainant.

T. J. Norton and *F. E. Andrews* for defendant carriers under federal control.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed October 3, 1918, it is alleged that the rates and minima on hoops (not iron), staves, and heading, hereinafter termed cooperage stock, in carloads, from groups C, D, E, F, G, H, and J, to points taking rate bases 1 and 2, as defined in Countiss's westbound transcontinental freight bureau tariff I. C. C. No. 1048, are unreasonable and that the rates and minima on this traffic to the same destinations from groups C, D, and E are unduly prejudicial. Reasonable and nonprejudicial rates and carload minima are sought. Rates will be stated in cents per 100 pounds.

The destinations include the California terminals and other western points, all of which take the same rates on cooperage stock from the groups of origin and for convenience will be referred to as the

California terminals. Cooperage stock is produced principally in groups D and E, comprising what are known as Chicago and Mississippi River territories, respectively. The complaint is based principally on the fact that lower rates and carload minima are applicable from California terminals to the various eastern groups than in the reverse direction.

Prior to March 15, 1918, the rates on cooperage stock to the California terminals were 80 cents, minimum 40,000 pounds, from group C, and 75 cents, same minimum, from group D and the other groups designated above. An alternative rate of 60 cents, minimum 60,000 pounds, also applied from all these groups of origin, except group C to the same destination. In *Transcontinental Rates*, 46 I. C. C., 236, the carriers were denied authority to maintain westbound transcontinental commodity rates to intermediate points higher than to terminal points. In the general readjustment of their rates following that proceeding the carriers canceled these rates on cooperage stock and established in lieu thereof, on March 15, 1918, rates of 80 cents from group C, 75 cents from groups D and E, and 70 cents from the groups west thereof, minimum 60,000 pounds. These rates, increased respectively 5 cents by the Director General of Railroads, are still in effect.

The present eastbound rate on staves and heading from the California terminals to the Missouri River, group F, is 55 cents, and to the Mississippi River, group E, 60 cents, minimum 30,000 pounds. The resulting minimum per car charges of $165 and $180 are contrasted with the minimum per car charges of $450 and $480 based on the 75 and 80 cent rates and 60,000 pound minimum now applying in the reverse direction.

Complainant states that the present basis westbound is such as materially to restrict the movement and contends that, if the present minimum is reasonable, the rates should be reduced to the level of the alternative rate of 60 cents in effect prior to March 15, 1918, or, if the present rates are reasonable, that the minimum should not exceed 40,000 pounds. It urges that the relative adjustment under which producers on the Pacific coast can reach markets in Chicago and Mississippi River territories at materially lower charges than producers in those territories can reach the Pacific coast unduly prefers the former and unduly prejudices the latter.

Complainant insists that cooperage stock, especially coiled elm hoops, will not load to the present minimum except in large cars, but the evidence in this respect is not convincing. An exhibit introduced by it without objection after the hearing covering shipments of cooperage stock from representative mills in central and western territories to San Francisco and Fresno, Calif., during

April and September, 1918, shows that on 43 cars the expense-bill weights ranged from 50,500 to 93,760 pounds, and that only three weighed less than 60,000 pounds.

Defendants rest their defense principally upon our decisions concerning lumber rates to the Pacific coast. In *Burgess* v. *Transcontinental Freight Bureau*, 13 I. C. C., 668, we found that the rate on hardwood lumber, in carloads, from Chicago and Chicago points and from Mississippi River points to Pacific coast terminals should not exceed 75 cents, and that the westbound rate might properly be higher than the eastbound rate, which finding, with respect to the reasonableness of the rates from points along and west of the Mississippi River, was reaffirmed in *Kindelon* v. *S. P. Co.*, 17 I. C. C., 251. In *Mich. Hardwood Mfrs. Asso.* v. *Trans. Freight Bureau*, 22 I. C. C., 387, 27 I. C. C., 32, we found that the rate from points in the southern peninsula of Michigan to Pacific coast terminals should not exceed 80 cents. The applicable minimum in connection with those rates was 40,000 pounds. Prior to the publication, effective March 15, 1918, of the rates with the higher minimum above referred to, the carriers filed fifteenth section applications requesting authority to establish those and various other commodity rates. In *Transcontinental Commodity Rates*, 48 I. C. C., 79, the filing of the rates covered by these applications was authorized, and no material facts bearing upon the question of reasonableness are advanced in support of complainant's contention that were not before us in that proceeding.

Complainant also directs attention to the ton-mile earnings of 6.5 and 7.7 mills and the minimum car-mile earnings of 19.6 and 23.1 cents yielded under present rates of 80 and 75 cents, minimum 60,000 pounds, from Memphis, Tenn., a group E point, and from Dallas, Tex., a group H point, to San Francisco for distances of 2,439 and 1,945 miles, respectively. The ton-mile earnings under the present 80-cent rate from Chicago, a group D point, and St. Louis, Mo., Little Rock, Ark., and Alexandria, La., all group E points, range from 6.5 to 7.3 mills, for distances of from 2,194 to 2,444 miles. In the *Burgess Case*, *supra*, we recognized the propriety of lower rates eastbound than westbound and in establishing the 75-cent rate said: "This allows the defendants a rate one-third higher upon the western movement than we have established upon the eastbound." An important consideration in arriving at this conclusion was the fact that the lumber shipped westbound was of higher value than that shipped eastbound. The same is true of cooperage stock. Complainant's witness testified that the cooperage stock shipped westbound is made of a superior quality of wood, is better adapted for some purposes than the product of the Pacific coast, and is more valuable. As bearing on the east bound minimum of 30,000 pounds, defendants had no figures with

respect to cooperage stock alone, but they showed that the carload weights of lumber loaded on various western lines in September, 1918, averaged as follows:

	Cars.	Average weight.
		Pounds
A., T. & S. F. coast lines	[illegible]	[illegible]
Los Angeles & Salt Lake	417	[illegible]
Oregon Short Line	[illegible]	[illegible]
Oregon-Washington	1,797	[illegible]
Southern Pacific:		
North of Ashland, Oreg	4,241	[illegible]
South of Ashland	4,[illegible]	[illegible]

Defendants' witness was unable to explain the relatively low minimum eastbound. The minima on cooperage stock from north Pacific coast terminals are graduated according to cubical capacities of cars and range from 42,500 pounds for cars of not over 2,100 cubic feet to 60,000 pounds for cars of 2,951 cubic feet or over, subject, however, to the marked weight capacity of the car when less than the graduated minima. The rates are the same as from the California terminals.

We do not find that the rates attacked are unreasonable or unduly prejudicial, or that the westbound minimum is unreasonable. Nor, upon the evidence submitted, are we able to reach the conclusion that the spread between the minima eastbound and westbound operates to the undue prejudice of the westbound shippers. An order will be entered dismissing the complaint.

55 I. C. C.

No. 10512

CHARLES BOLDT PAPER MILLS

v.

DIRECTOR GENERAL.

Submitted May 2, 1919. Decided October 21, 1919.

Tank-car loads of silicate of soda shipped from Ancor, Ohio, to Red Bank, Ohio, found to have been overcharged and also misrouted. Reparation awarded.

T. J. McLaughlin for complainants.

C. P. Stewart for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainants, Charles Boldt, Fred W. Schwenck, and Fred S. Whitehead, copartners engaged in the manufacture of corrugated boxes and paper-box board at Red Bank, Ohio, within the switching limits of Cincinnati, Ohio, allege by complaint seasonably filed, as amended, that the charges collected on two tank-car loads of silicate of soda, shipped in November, 1918, and March, 1919, respectively, from Ancor, Ohio, to Red Bank were unreasonable under section 10 of the federal control act and section 1 of the act to regulate commerce and ask reparation. Throughout this report rates are stated in cents per 100 pounds.

One of the cars had been shipped to Ancor from Fortville, Ind., and some question is suggested as to whether the movement of that car from Ancor to Red Bank was part of the through movement from Fortville, but upon the facts disclosed by the record we conclude that both shipments were local from Ancor.

The rate complained of, although applicable to intrastate traffic, was initiated by the President through the Director General of Railroads, and by section 10 of the federal control act the authority to determine upon complaint the justness and reasonableness of such rate and to award reparation on shipments moving thereunder is vested in this Commission. *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 55 I. C. C., 280.

The shipments weighed in the aggregate 166,980 pounds and moved over the Norfolk & Western Railroad to Clare, Ohio, and from that point to destination over the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad. Silicate of soda is rated fifth class in official classification and, by exceptions to the classification, takes 85 per cent of the sixth-class rate; and 85 per cent of the sixth-class rate then applicable over the route of movement would be 8 cents. Aggregate charges of $150.28, exclusive of war tax, were collected at a rate of 9 cents then carried in defendant's tariffs as a minimum fifth-class rate under the following minimum-charge rule:

Minimum Class Rates in Cents Per 100 Pounds.—No rate shall be applied on any traffic moving under class rates lower than the amount in cents per one hundred pounds for the respective classes as shown below for the several Classifications.

The minimum rate on any article shall be the rate for the class at which that article is rated in the Classification shown below applying in the territory where the shipment moves. * * *

Where rates are Governed by Official Classification No. 44. * * *

Classes	1	2	3	4	5	6	Rule 25	Rule 26
Rates	25	21½	17	12½	9	7	18½	13½

* * * * * * *

Defendants admit that this rule has no application to specific commodity rates and, while General Order No. 28, of the Director General of Railroads directed the establishment of such a rule applicable to class traffic and also directed that "any article, on which exceptions to any classification provide a different rating than is shown in the classification to which it is an exception, will be subject to the minimum * * * for the class provided therefor in the classification proper," the rule actually established by the defendant carriers, and above quoted, can not be interpreted as applicable by implication to ratings provided in the exception sheet based on a percentage of the class ratings. The legally applicable rate over the route of movement was 8 cents and the shipments were overcharged $16.70.

When the shipments moved, the local rate of the Norfolk & Western Railroad from Ancor to Cincinnati was 5.5 cents and, as that carrier provided for the absorption of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad's switching charges at Cincinnati, that rate applied from Ancor to Red Bank over the route of those carriers on traffic interchanged within the Cincinnati switching limits. Moreover, according to defendant's testimony, the route over which that rate applied is the normal route between the points in question, the traffic being interchanged at Court street, Cincinnati. No junction point was specified in the billing and the shipments were, therefore, misrouted by the Norfolk & Western Railroad.

We find that complainants made the shipments as described and paid and bore the charges thereon and that they have been damaged to the extent that the charges collected exceeded those which would have accrued at the rate of 5.5 cents and that they are entitled to reparation in the sum of $58.44, with interest, $16.70 of which amount is on account of illegal charges collected and $41.74 for the misrouting.

An order will be entered accordingly.

No. 10473.

GEORGE C. HOLT ET AL., RECEIVERS OF AETNA EXPLOSIVES COMPANY,

v.

DIRECTOR GENERAL, NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, ET AL.

Submitted May 8, 1919. Decided October 24, 1919.

Rate of $1.028 per 100 pounds on a carload of high explosives from South Windsor, Conn., to Emporium, Pa., found unreasonable to the extent that it exceeded the joint first-class rate of 46.3 cents contemporaneously in effect. Measure of reasonable maximum rate prescribed for the future and reparation awarded.

Winthrop & Stimson by *Edward E. Miller* for complainants.
Lucius H. Kentfield for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The complainants, George C. Holt and Benjamin B. Odell, receivers of the Aetna Explosives Company, by complaint seasonably filed seek reparation on a carload of high explosives shipped July 18, 1917, from South Windsor, Conn., to Emporium, Pa., alleging that the rate charged was unreasonable by the amount it exceeded the joint first-class rate contemporaneously in effect. Rates are stated in cents per 100 pounds.

The shipment, weighing 26,620 pounds, on which freight charges of $273.65 were paid, based upon the legally applicable combination

rate of $1.028, composed of a double first-class rate of 56 cents to Harlem River, N. Y., a floatage charge of 10 cents from Harlem River to Greenville Piers, N. J., and a first-class rate of 36.8 cents from Greenville Piers to Emporium, moved over the lines of the defendants, a distance of 509 miles. The complainants show that at the time and via the route of movement the joint first-class rate in effect was 46.3 cents, the same in amount as the joint commodity rate applicable on high explosives in the reverse direction, and, relying upon *Aetna Explosives Co.* v. *C. & E. I. R. R. Co.*, 52 I. C. C., 26 and cases there cited, complainants urge that the joint first-class rate would have been reasonable for this transportation.

Defendants deny that high explosives should in all cases take first-class rates as a maximum but admit that under the circumstances here presented the first-class rate would have yielded a reasonable revenue and stated that application had been made for authority to establish that rate westbound. It appears from tariffs on file with us that the present rate, which became effective August 5, 1919, is $1.02, and that the joint first-class rate, effective June 25, 1918, is 66.5 cents.

We find that the rate assailed was, and that the present rate is and for the future will be, unreasonable to the extent that it exceeded or may exceed the joint first-class rate contemporaneously in effect from South Windsor to Emporium; that the shipment was made as alleged; that complainants paid and bore the freight charges at the rate herein found unreasonable and were damaged in the amount that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of $150.40, with interest. An appropriate order will be entered.

No. 10338.

W. T. FERGUSON LUMBER COMPANY
v.
DIRECTOR GENERAL, LOUISIANA & ARKANSAS RAILWAY COMPANY, ET AL.

Submitted March 10, 1919. Decided September 25, 1919.

Demurrage charges collected for detention, at Akron, Ohio, of a carload of lumber shipped from Stamps, Ark., to South Akron, Ohio, found to have been illegal. Reparation awarded.

Robert A. Thomann for complainant.

D. P. Williams for Director General of Railroads.

A. L. Graner for Akron, Canton & Youngstown Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainants are W. T. Ferguson and William Buchanan, copartners, engaged in the lumber business at St. Louis, Mo., under the name of W. T. Ferguson Lumber Company. By complaint filed November 29, 1918, as amended, they allege that the demurrage charges collected on a carload of lumber shipped June 13, 1917, from Stamps, Ark., to East St. Louis, Ill., reconsigned to South Akron, Ohio, were illegal and unreasonable, and pray for reparation accordingly.

The shipment, which consisted of yellow-pine lumber, originated at Stamps. Upon its arrival at East St. Louis complainants requested the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company to reconsign it to the Union Lumber & Coal Company, "South Akron," Ohio, for Baltimore & Ohio delivery. Having been informed that the desired delivery was then embargoed, complainants asked that the car be sent to destination by any open route. Accordingly an exchange bill of lading was issued, routed "P. C. C. & St. L., W. & L. E., and A. C. & Y" to "South Akron," and the shipment moved over those lines to Akron. The applicable tariff showed no "South Akron" station on the Akron, Canton & Youngstown Railroad, the delivering line specified in the routing instructions and hereinafter called defendant; nor had the defendant any team tracks

in South Akron and the consignee was not situated on any private siding on its line. The car arrived at Akron July 15, 1917, and defendant so notified the consignee, who requested delivery on the team tracks of the Baltimore & Ohio in South Akron, within the corporate and switching limits of Akron, and refused to accept other delivery, although advised by defendant of the embargo and that the desired delivery could not be accomplished. The car remained in defendant's hold yard until the embargo was raised, when it was delivered to the Baltimore & Ohio, and released on December 4, 1917. Defendant collected the applicable transportation charges and $390 demurrage for the detention on defendant's rails. The latter charge only is assailed.

Defendant's reconsignment tariff, in effect when the shipment moved, made no restriction of the right of reconsignment to embargoed points and specifically contemplated reconsignment on combination of local rates; and its demurrage tariff contained no such restriction or any provision for the imposition of demurrage charges for the detention of cars reconsigned to embargoed points. In *Higgins Lumber & Export Co.* v. *N. O. G. N. R. R. Co.*, 51 I. C. C. 214, 215, we said:

> The Commission has held that demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point, upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can avoid or abate while an embargo is placed by reason of the carriers' disability. *Reconsignment Case*, 47 I. C. C., 590, 634.

We find that the demurrage charges assailed were illegal; that complainants made the shipment as described and paid and bore the demurrage charges thereon; and that they were damaged thereby and are entitled to reparation in the sum of $390, with interest. An appropriate order will be entered.

No. 10575.

WALL ROPE WORKS, INCORPORATED,

v.

PENNSYLVANIA RAILROAD COMPANY AND DIRECTOR GENERAL.

Submitted June 24, 1919. Decided October 24, 1919.

Defendant carrier's refusal to transport in carloads certain shipments of rope from Beverly, N. J., to New York, N. Y., found to have been unlawful. Reparation awarded.

H. L. Davis for complainant.

George R. Allen for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the manufacture of rope at Beverly, N. J., alleges, by complaint filed April 8, 1919, that the charges collected on three less-than-carload shipments of rope from Beverly to New York, N. Y., on April 20, 1917, were illegal, unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the charges that would have accrued at the carload rate of 10 cents per 100 pounds and actual weight. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 53,752 pounds, moved over the Pennsylvania Railroad from Beverly to piers 4 and 5, New York. Charges were collected in the sum of $84.93, at the less-than-carload rate of 15.8 cents. Contemporaneously a carload rate of 10 cents, minimum 30,000 pounds, applied over the route of movement. On April 18, 1917, two days prior to the movement of the shipments, an existing embargo declared by the Pennsylvania Railroad against certain traffic was modified so as to permit carload shipments from and to these points. It is stated that at the time the shipments moved the agent of the Pennsylvania Railroad at Beverly had not received notice of the removal of the embargo in so far as carload traffic was concerned. He refused to accept the shipments as carload traffic and insisted that they go forward as less-than-carload traffic, against which there was no embargo. The rope was destined to complainant's warehouse in New York, and complainant testi-

fied that both before and after the date of these shipments it customarily shipped rope to that warehouse in carload quantities, and that these shipments would have been so made but for the refusal of the defendant carrier's agent to accept them. The Pennsylvania Railroad admits that the action of its agent was unauthorized and expresses willingness to make reparation on the basis of the carload rate.

Following *Wall Rope Works* v. *P. R. R. Co.*, 49 I. C. C., 19[illegible], and upon the facts of record we find that the defendant carrier's refusal to accept and transport the rope as carload traffic was unlawful; that complainant made the above-described shipments and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued if the shipments had been forwarded as carload traffic; and that it is entitled to reparation in the sum of $31.15, with interest.

An appropriate order will be entered.

No. 10474.

SONKEN-GALAMBA IRON & METAL COMPANY

v.

DIRECTOR GENERAL, MISSOURI PACIFIC RAILROAD COMPANY, ET AL.

Submitted May 13, 1919. Decided October 24, 1919.

Rates of 29, 30, and 31 cents per 100 pounds on scrap iron, in carloads, from named points in southeastern Arkansas to Kansas City, Mo., found unreasonable to the extent that they exceeded 26 cents per 100 pounds. Reasonable maximum rates prescribed for the future. Reparation awarded.

R. H. Williams for complainant.

Henry G. Herbel for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

By complaint filed February 20, 1919, complainant, a corporation dealing in scrap iron at Kansas City, Mo., alleges that the class D rates charged on shipments of scrap iron from Dermott, Portland, Jennie, and Lake Village, Ark., to Kansas City were unreasonable, unjustly discriminatory, and violative of section 4 of the act to regulate commerce. Reparation and the establishment of reasonable rates are sought. Rates will be stated in cents per 100 pounds.

The shipments moved during April, May, June, and July, 1917, via the Missouri Pacific. The points of origin are located in the extreme southeastern part of Arkansas and the hauls ranged from 621 to 642 miles. Portland and Dermott are directly intermediate to Monroe, La., via the route of movement, and similarly Jennie and Lake Village are directly intermediate to Tallulah, La. Charges were collected at the class D rates, governed by the western classification, of 31 cents on six carloads from Portland, 30 cents on a carload from Dermott, and 29 cents on a carload from Jennie and on two carloads from Lake Village, all subject to a minimum weight of 50,000 pounds.

The Missouri Pacific contemporaneously maintained commodity rates of 20 and 26 cents, minimum weight 40,000 pounds from Monroe and Tallulah, respectively, to Kansas City. These rates have been

increased to 25 and 32.5 cents, respectively, by General Order No. 28 of the Director General of Railroads, and his certificate as to the need of additional revenues stands uncontroverted. Complainant cited rates of 31.75 cents from all the originating points to Colorado common points, for distances ranging from 1,046 to 1,144 miles; also rates of from 10 to 16 cents to St. Louis, Mo., and Memphis, Tenn., and rates of 10 cents and 15 cents from St. Louis and Memphis, respectively, to Kansas City, with resulting combinations of from 25 to 28 cents for the longer hauls. The class D rate from Jennie to Colorado common points was 47 cents; and from Monroe and Tallulah, respectively, to both St. Louis and Kansas City, 41 cents and 29 cents.

Defendants' witness testified that there is no regular movement of scrap iron from these points to either Kansas City or Colorado points. They contend that the class rates were reasonable for the service performed. The departure from the long-and-short-haul provision of the fourth section in connection with the 20-cent rate from Monroe to Kansas City comported with our Fourth Section Order No. 3700, General No. 13, but the like departure in connection with the 26-cent rate from Tallulah to Kansas City was unauthorized and unlawful.

We find that the rates assailed were, during the period of the shipments in question, unreasonable to the extent that they exceeded 26 cents per 100 pounds, and that they are and for the future will be unreasonable to the extent that they may exceed 32.5 cents per 100 pounds, minimum 40,000 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon, that it has been damaged thereby to the extent that the charges paid exceeded those which would have accrued on the basis herein found reasonable, and that it is entitled to reparation, with interest. The amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 10495.

NATIONAL REFINING COMPANY

v.

DIRECTOR GENERAL, MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, ET AL.

Submitted June 16, 1919. Decided October 24, 1919.

Rate of 75 cents per 100 pounds on motor lubricating oil, in carloads, from San Antonio, Tex., to Coffeyville, Kans., found unreasonable to the extent that it exceeded the rate of 35 cents contemporaneously maintained from Houston, Tex. Reparation awarded.

Clifford Thorne for complainant.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

By complaint, filed March 5, 1919, complainant, a corporation engaged in refining petroleum at Coffeyville, Kans., alleges that the rate charged on one carload of motor lubricating oil, in drums, shipped April 13, 1918, from San Antonio, Tex., to Coffeyville, Kans., was unreasonable and unduly prejudicial. Reparation and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 63,787 pounds, moved via the Missouri, Kansas & Texas Railway of Texas to Denison, Tex., and Missouri, Kansas & Texas Railway beyond, 678 miles. Freight charges of $478.40 were collected, exclusive of war taxes, at the applicable fifth-class rate of 75 cents governed by the western classification. At the time of movement a rate of 35 cents was applicable from Beaumont, Galveston, Houston, Port Arthur, and other points in Texas in the so-called Beaumont-Port Arthur group to Coffeyville. On June 25, 1918, the 75-cent rate was increased to 94 cents and the 35-cent rate to 39.5 cents. Effective June 6, 1919, defendants established the same rates from San Antonio to Coffeyville as those in effect from the Beaumont-Port Arthur group. We are asked to award reparation upon the basis of 35 cents and to prescribe a rate of 39.5 cents for the future.

Complainant cited rates of 35 cents applying on crude and fuel oil from San Antonio to Coffeyville, Kansas City, Mo., East St. Louis, Ill., Oklahoma City, Okla., and other destinations in the same general territory; 42 cents on lubricating oil from Coffeyville to San Antonio; and from San Antonio to Coffeyville rates ranging from 27 cents to 40 cents on peanut oil and other commodities, some of which are higher in value than lubricating oil. Rates cited on lubricating oil from the Beaumont-Port Arthur group average less than 50 per cent of the fifth-class rates, and the rate of 35 cents from Houston applies for distances as great as 1,434 miles. The rates in the following statement are representative of many cited by complainant:

Rates on lubricating oil from points in Texas and Louisiana to Coffeyville, Kans., as compared with rate applied from San Antonio.

From—	Miles.	Rate in cents.	Mills per ton-mile.	Cents per car-mile.
Orange, Tex	738	35	9.47	30.25
Port Arthur, Tex	688	35	10.17	32.44
Houston, Tex	632	35	11.07	35.32
Galveston, Tex	690	35	10.14	32.35
Beaumont, Tex	666	35	10.51	33.52
Shreveport, La	465	35	15.05	48.00
San Antonio	678	75	22.12	70.52

Defendants say that the Beaumont-Port Arthur group lies in an oil field, whereas San Antonio, 209 to 250 miles to the west, does not; that this was an isolated shipment, refused at San Antonio and returned to Coffeyville, to which the class rate was properly applicable; and that there is some prospect of a movement in the future, and that they intended to establish a rate of 39.5 cents, which as noted above has been done.

We find that the rate charged was unreasonable to the extent that it exceeded the rate contemporaneously maintained from Houston; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the freight charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $255.15, with interest. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable. As the rate asked has been established, no order for the future is necessary.

An order awarding reparation will be entered.

No. 10435

SOUTHERN LUMBER COMPANY

v.

DIRECTOR GENERAL, ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, ET AL.

Submitted July 12, 1919. Decided October 24, 1919.

Demurrage charges assessed at St. Louis, Mo., on one carload of rough oak lumber shipped from Parma, Mo., and reconsigned to Chicago, Ill., found to have been illegal. Reparation awarded.

Ray Williams for complainant.

J. R. Turney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, J. F. Von Behren, engaged in the lumber business at Cairo, Ill., under the name of Southern Lumber Company, by complaint filed February 3, 1919, alleges that the demurrage charges collected at St. Louis, Mo., on one carload of rough oak lumber, shipped from Parma, Mo., to St. Louis, May 7, 1917, and reconsigned to Chicago, Ill., were unreasonable. Reparation is asked.

The case is submitted upon an agreed statement of facts. On May 7, 1917, the Ash Handle Company loaded a car with rough oak lumber at Parma, on the rails of the St. Louis-San Francisco Railway, and consigned the same to complainant at St. Louis on a bill of lading made out on a form of the St. Louis Southwestern Railway, which was presented to the joint agent of the St. Louis-San Francisco Railway and the St. Louis Southwestern Railway, at Parma, and executed by him as agent of the St. Louis-San Francisco Railway. The shipper discovered that the wrong form had been used and desired to make a new bill of lading, but the agent stated that this was not necessary and that he would correct the bill of lading to the St. Louis-San Francisco Railway form. The bill of lading was made out in triplicate, the first copy being the shipping order, the second the original bill of lading, and the third a memorandum. The change was made by writing the initials "St. L. S. F. Ry." in pencil and stamping "Frisco" across the top of the shipping order. The sheets were arranged with a view to making carbon

impressions of the corrections on the other copies, but the impressions were so indistinct that they could not be deciphered.

The Ash Handle Company, assuming that the necessary change had been made, paid no further attention thereto and sent the original bill of lading to complainant. No notation appearing thereon indicating that the shipment moved over the St. Louis-San Francisco Railway, complainant on May 11, 1917, filed a request with the St. Louis Southwestern Railway to reconsign the car to Chicago, Ill., enclosing the bill of lading. No reconsigning instructions were placed with the St. Louis-San Francisco Railway until it was reported to the shipper that the car was on hand with that carrier and $46 demurrage charges had accrued, which were paid by the complainant, and the car reconsigned to Chicago.

Complainant contends that if the agent at Parma had allowed the shipper to make out a new bill of lading upon the proper form, or had made the proper correction on the original bill of lading, there would have been no delay and no demurrage.

We are of the opinion that the detention of the car at St. Louis was due to the action of the railroad agent in disregarding the request of the shipper to make out a new bill of lading and in failing to make the proper correction on the original bill of lading. The demurrage rules of the St. Louis-San Francisco Railway provide that no demurrage charges shall be collected for the detention of cars due to railroad errors which prevent proper tender or delivery.

We find that under the tariff rules no demurrage accrued, and that, therefore, the demurrage charges collected were illegally assessed. We further find that complainant paid and bore the demurrage charges; that it has been damaged in the amount thereof, and that it is entitled to reparation from the St. Louis-San Francisco Railway Company in the sum of $46, the amount of the demurrage charge, with interest.

An order awarding reparation will be entered.

No. 10392.

STURGES & BURN MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, INDIANA HARBOR BELT RAILROAD COMPANY, ET AL.

Submitted May 12, 1919. Decided October 16, 1919.

Rate of $2.07 per 100 pounds charged on a carload of metal barrel churns shipped from Bellewood, Ill., to Portland, Oreg., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

M. S. Allison for complanant.

L. P. Day and *Glennon, Cary & Walker* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed September 9, 1918, complainant, a corporation, seeks reparation alleging that the rate charged on a carload of metal barrel churns, shipped December 4, 1916, from Bellewood, Ill., to Portland, Oreg., was unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the corresponding rate on wooden churns. Rates will be stated in cents per 100 pounds.

The shipment, consisting of hand-operated metal barrel churns, crated, weighing 19,799 pounds, was loaded in a 40-foot car and moved: Indiana Harbor Belt Railroad to Congress Park, Ill.; Chicago, Burlington & Quincy Railroad to St. Paul, Minn.; Great Northern Railway to Spokane, Wash.; and Spokane, Portland & Seattle Railway, beyond. Charges of $463.68 were collected, at the applicable fourth-class rate of $2.07, minimum weight 22,400 pounds for size of car used.

Complainant's churns are of the revolving-barrel type, with from 5 to 15 gallons capacity. The barrels are made of steel, enameled outside and heavily tinned inside, with cork-lined covers, malleable iron trunnions, and welded steel supporting frames or stands for operation. When packed for shipment the steel frames are detached, the barrels are wrapped in heavy paper and set down within the frames, and as thus nested the churns are securely crated. They weigh from 7 to 10 pounds per cubic foot when crated, and not more

than 15,300 pounds can be loaded in a 36-foot car; but they are heavier than wooden churns of the same cubical contents.

From September 1, 1916, to April 1, 1918, all metal churns were rated fourth class, minimum weight 20,000 pounds, and wooden churns were rated fourth class, minimum weight 15,000 pounds. These minima were subject to rule 6-B of western classification and varied according to the size of car used. The rating on complainant's churns was increased to third class, minimum weight 15,000 pounds, subject to the above rule, on April 1, 1918, but the ratings on other metal churns and on wooden churns remained as before. At the time of the movement a commodity rate of $1.50, flat minimum weight 16,000 pounds, was applicable to woodenware including wooden churns. On April 16, 1917, subsequent to the movement, defendants established a commodity rate of $1.50, flat minimum weight 20,000 pounds, on complainant's churns. Under authority of Fourth Section Order No. 6790, in *Transcontinental Rates*, 46 I. C. C., 236, these two commodity rates were increased to $1.65, effective March 15, 1918; and on June 25, 1918, they were further increased to $2.065. The reparation sought is on the basis of the $1.65 rate and 20,000-pound minimum.

Aside from citing a rate of $1.35, minimum weight 16,000 pounds, on iron and steel barrels from and to the same points complainant made no attempt to show that the rate charged was intrinsically unreasonable, but relied principally upon the fact that a lower rate and minimum weight applied on woodenware, including wooden churns. The witness testified that there was competition between the two articles, and that complainant had not filed claims for damage on its carload or less-than-carload shipments.

It was testified for defendants that the $1.50 rate was made applicable on complainant's churns in response to complainant's request; that complainant stated that a rate of $1.32 had been quoted it for movement via rail and water; that the shipment in question is the only one that has moved, and that the $1.50 rate on woodenware, including wooden churns, was established to meet water competition. They contend that the fourth-class rate was not unreasonable *per se* and point out that these churns are now rated third class, or one class higher than wooden and other metal churns.

We have repeatedly held that the voluntary reduction of a rate by carriers is not enough to support an award of reparation on shipments moving prior to the reduction and find here that the rate charged is not shown to have been unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

No. 10466.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, PHILADELPHIA & READING RAILWAY COMPANY, ET AL.

Submitted June 26, 1919. Decided October 24, 1919.

Rate of 16 cents per 100 pounds on nitrate of soda, in bags in carloads, from Port Richmond, Pa., to Carney's Point, N. J., found unreasonable to the extent that it exceeded the aggregate of intermediate rates. Rate for future prescribed. Reparation awarded.

Harvey S. Farrow for complainant.

George R. Allen for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By complaint filed February 14, 1919, complainant, a corporation, alleges that the rate charged on 39 carloads of nitrate of soda in bags, shipped February 23 and 24, 1918, from Port Richmond (Philadelphia), Pa., to Carney's Point, N. J., was, and that the present rate is, unreasonable. Reparation and rates for the future are sought. Rates will be stated in cents per 100 pounds.

The shipments moved, apparently as routed by complainant, from Port Richmond via the Philadelphia & Reading Railway to Belmont (Philadelphia), Pa., thence over the Pennsylvania Railroad and the West Jersey & Seashore Railroad by way of the Delaware River bridge, a distance of 75 miles, if there be included a constructive distance of 20 miles for the bridge service. In the official classification nitrate of soda, in bags in carloads, minimum weight 40,000 pounds, is rated fifth class. The value of this commodity is from $80 to $90 per ton. The rate charged was the fifth-class rate of 16 cents. Contemporaneously, by the route of movement, there existed a combination rate of 11.3 cents, composed of a fifth-class rate of 5 cents from Port Richmond to Belmont, applicable to interstate traffic, and a commodity rate of 6.3 cents from Belmont to Carney's Point. The ton-mile earnings under this 11.3-cent combination rate would have been 30 mills and the car-mile earnings, using 34 tons, approximately the average weight of the shipments in the complaint, about $1.02.

A commodity rate of 3.2 cents applied from Port Richmond to Park Junction, a Philadelphia station about 2.5 miles beyond Belmont. Had this rate been applicable to Belmont the aggregate of the intermediates from Port Richmond to Carney's Point, based on Belmont, would have been 9.5 cents. Complainant contends that 9.5 cents is the reasonable combination rate to the basis of which reparation should be awarded, if not to the basis of 9 cents, which latter rate is asked for the future. The ton-mile earnings under the 9.5-cent rate would have been 25 mills, and the car-mile earnings about 86 cents.

Gibbstown, N. J., is a point on the Pennsylvania Railroad about 14 miles nearer Port Richmond than is Carney's Point. In *Du Pont de Nemours & Co.* v. *P. & R. Ry. Co.*, 51 I. C. C., 671, decided December 19, 1918, the carriers admitted that the rate from the same point of origin to Gibbstown over the route here used should not have exceeded the rate of 3.2 cents from Port Richmond to Park Junction, to which point Belmont is directly intermediate, plus the rate from Belmont to Gibbstown of 6.3 cents, or 9.5 cents. We awarded reparation to the basis of 9 cents on shipments which moved prior to the advances following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and General Order No. 28 of the Director General. The 9-cent rate had already been established by the carriers and is still in effect. It yields ton-mile and car-mile earnings, the latter under a 34-ton loading, of 29.5 mills and $1, respectively.

Paulsboro, N. J., is a station 3 miles nearer Port Richmond than Gibbstown, and 17 miles nearer than Carney's Point. A rate of 8.4 cents was applicable over the route of movement to Paulsboro, which has since been increased to 12 cents. A rate of 7.9 cents was applicable from Port Richmond to Elkton, Md., since increased to 11.5 cents. The fifth-class rates of 13.5 cents, 14.5 cents, and 16 cents to Paulsboro, Gibbstown, and Carney's Point, respectively, have been advanced to 17 cents, 18 cents, and 20 cents. Defendants point out that the present rate to Gibbstown is not applied at intermediate points, and that, unlike the Paulsboro rate, it is abnormal in the sense that it does not reflect the 15 per cent and 25 per cent advances. They are willing to establish a rate to Carney's Point 3 cents higher than to Paulsboro, which is the difference in the present fifth-class rates. They contend that the 6.3-cent rate from Belmont to Carney's Point was unduly low, and point out that it also applied to Paulsboro and Gibbstown, which latter destinations are substantially nearer Belmont than is Carney's Point.

We are of the opinion and find that the rate charged on the shipments was unreasonable to the extent that it exceeded 11.3 cents, the aggregate of the intermediate rates subject to the act contemporane-

ously in effect to and from Belmont; that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed 15 cents per 100 pounds; that the complainant made shipments as described and paid and bore the charges thereon; that it was damaged thereby, and is entitled to reparation in the difference between the charges so paid and those which would have accrued on the basis herein found reasonable, with interest. The amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, which it should then submit to the defendants for verification. Upon the receipt of such a verified statement we will consider the entry of an order awarding reparation.

Apparently, the rates from Port Richmond to Park Junction and Gibbstown, lower than to intermediate points, were in violation of the fourth section. These rates should be properly aligned; and the rate to Carney's Point should not exceed the combination of rates to and beyond Gibbstown or Belmont.

An appropriate order will be entered.

No. 10472.

GEORGE C. HOLT ET AL., RECEIVERS OF AETNA EXPLOSIVES COMPANY, v. DIRECTOR GENERAL, CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, ET AL.

Submitted May 8, 1919. Decided October 21, 1919.

Rate of 58 cents per 100 pounds on carload shipments of high explosives from Fayville, Ill., to Flat River, Mo., found not unreasonable via Salem, Ill., but found unreasonable via Ste. Genevieve, Mo., to the extent that it exceeded a joint first-class rate of 52 cents. Reasonable maximum rate prescribed for the future. Reparation awarded.

Winthrop & Stimson by *Edward E. Miller* for complainants.
C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

George C. Holt and Benjamin B. Odell, the receivers of the Aetna Explosives Company, by complaint seasonably filed allege that the commodity rate assessed on 29 carloads of high explosives shipped between April 7, 1917, and May 6, 1918, from Fayville, Ill., to Flat River, Mo., was unreasonable by the amount that it exceeded the joint first-class rate contemporaneously applicable. Reparation and the establishment of a reasonable rate for the future are sought. Rates are stated in cents per 100 pounds.

The record does not show that the shipments were routed by the shipper. Eighteen of them moved via the Chicago & Eastern Illinois Railroad, hereinafter referred to as the C. & E. I., to Salem, Ill., thence via the Illinois Southern Railway to Flat River, a distance of 237 miles involving a ferry service across the Mississippi River at Kellogg, Ill. The other 11 shipments moved via the C. & E. I. to Chaffee, Mo., or Thebes Transfer, thence via the St. Louis-San Francisco Railway to Ste. Genevieve, Mo., and thence via the Illinois Southern to destination, a distance of 130 miles involving a movement over the bridge at Thebes.

They aggregated 1,363,637 pounds, on which total freight charges of $7,909.13, plus a war tax, were assessed at the 58-cent commodity

rate legally applicable over either route. The rate charged was increased from 38 cents, effective November 15, 1916. The burden of proof therefore is upon defendants.

Complainants, being under the impression that a joint first-class rate of 52 cents contemporaneously applied over either route, upon the authority of *Aetna Explosives Co.* v. *C. & E. I. R. R. Co.*, 52 I. C. C., 26, and other cases therein cited, which found that the first-class rates were maximum reasonable rates for high explosives, urge that the higher commodity rate was, and for the future will be, unreasonable by the amount of its excess over the joint first-class rate. An examination of the tariffs on file indicates that the 52-cent first-class rate applied only by way of the shorter route and that there was no joint first-class rate by way of the longer route. It is also shown that the joint first-class rate would have applied to the 11 shipments which moved over the shorter route in the absence of the commodity rate, and that to Central and Elvins, Mo., points 0.5 mile and 1.2 miles, respectively, beyond Flat River, a joint first-class rate of 52 cents was applicable on high explosives from Fayville by the shorter route. This departure from the provisions of the fourth section was not protected by a fourth section application and was and is unlawful.

For the C. & E. I. it was testified that the 58-cent commodity rate assessed was arrived at by combining the local first-class rate of 45 cents, applicable in Missouri for the distance from Thebes to Flat River, and a 13-cent first-class Illinois distance rate from Fayville to Thebes, the distance being 4.3 miles. Defendants admit that ordinarily first class is a reasonable rating to be applied to high explosives, but contend that in this instance the first-class rate is unduly low. It is shown that the 52-cent first-class rate is upon the single-line Missouri scale B basis and that if the Missouri joint-line scale, which is also asserted to be unreasonably low, had been applied the first-class rate for the 130-mile haul would have been 58 cents. The present first-class rate under the Missouri joint-line scale for 130 miles is 72.5 cents, the amount to which the 58-cent rate was increased on June 25, 1918, under General Order No. 28 of the Director General. It is further testified that the cars furnished by the C. & E. I. for the movement of these and all other shipments of high explosives from Fayville require special inspection and preparation to make them suitable for this transportation, and that this involves an added expense of from $8 to $10 per car. It was stated by the witness for this defendant that an effort would be made to bring about what it considered a proper adjustment of this rate; that if the Missouri lines wanted to apply the Missouri scale to this transportation in Missouri it could be done, but that the C. & E. I. was not willing to carry that scale into Illinois. Effective June 1,

1919, an attempt was made by defendants to cancel the commodity rate on high explosives from and to the points in question, but the supplement carrying the proposed cancellation was rejected by our tariff bureau.

We find that the 58-cent rate applicable to the 18 shipments which moved over the longer route through Salem was not unreasonable, but that the 58-cent rate applicable to the 11 shipments which moved over the shorter route through Ste. Genevieve was and for the future will be unreasonable to the extent that it exceeded or may exceed the joint first-class rate contemporaneously applicable over that route; that the complainants made the shipments as alleged and paid and bore the freight charges thereon; that they have been damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that complainants are entitled to reparation. Upon this record we are unable to identify the 11 shipments which moved by way of Salem and we can not therefore determine the amount of reparation due. Complainants should therefore prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

An appropriate order will be entered.

No. 8406 (Sub-No. 1).[1]

AMERICAN STEEL & WIRE COMPANY
v.
NEWBURGH & SOUTH SHORE RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted November 6, 1919. Decided November 10, 1919.

The Newburgh & South Shore Railway Company and the Union Railroad Company found to be common carriers subject to the act to regulate commerce which may lawfully receive from their trunk line connections divisions of joint rates, or absorptions of switching charges, under appropriate tariffs, such divisions or absorptions to be reasonable. Other issues reserved for determination upon a fuller record.

Charles MacVeagh, *Charles S. Belsterling*, and *James R. Garfield* for Newburgh & South Shore Railway Company and Union Railroad Company.

George Stuart Patterson for defendants other than the industrial railroads.

REPORT OF THE COMMISSION.

HALL, *Commissioner:*

These proceedings are before us upon supplemental cross petition of the Newburgh & South Shore Railway Company and the Union Railroad Company, hereinafter respectively termed the South Shore and the Union, asking that, as an incident to the disposition of other issues presented by the pleadings, we determine in a preliminary report whether or not the roads named are common carriers. This report will be confined to that issue.

The South Shore was organized in 1899 under the general corporation laws of the state of Ohio. The road is in the Cleveland, Ohio, rate district. The following table shows the mileage operated:

[1] This report also embraces No. 8406 (Sub-No. 2), Same *v.* Same; No. 8406 (Sub-No. 3), Same *v.* Same; No. 8406 (Sub-No. 4), Same *v.* Same; No. 8406 (Sub-No. 5), Same *v.* Same; No. 8406 (Sub-No. 6), Same *v.* Same; No. 8406 (Sub-No. 7), Same *v.* Same; No. 8406 (Sub-No. 16), Carnegie Steel Company *v.* Union Railroad Company, Director General, et al.; No. 8406 (Sub-No. 17), Same *v.* Same; No. 8406 (Sub-No. 18), Same *v.* Same; No. 8406 (Sub-No. 19), Same *v.* Same; No. 8406 (Sub-No. 24), Universal Portland Cement Company *v.* Same; No. 8406 (Sub-No. 25), Same *v.* Same; No. 8406 (Sub-No. 27), Same *v.* Same; and No. 8406 (Sub-No. 28), Same *v.* Same.

	Miles owned.	Miles leased.	Total mileage.
Main tracks:			
First	5.460	1.710	7.170
Second	5.258	1.020	6.278
Third	1.701	.....	1.701
Cross overs	.414	.164	.578
	12.833	2.894	15.727
Branch tracks	3.623	.....	3.623
Locomotive and car-shop tracks	1.220	.....	1.220
Interchange tracks	1.831	.....	1.831
Running tracks	6.901	8.127	15.184
Yards and sidings (storage and classification)	20.112	17.072	[1] 37.184
Turnouts and spurs to private sidings	1.562	.....	1.562
Total	48.082	28.093	76.175

[1] 3.763 miles of sidings owned by industries not included in above.

All tracks operated are standard gauge and are said to be in at least as good condition as those of the trunk lines in the vicinity.

The South Shore leases from the Baltimore & Ohio Railroad 500 feet of trackage on the river front of Cleveland, paying a rental of $200 per year and one-half of the cost of maintaining the dock at that point.

A majority of the stock of the South Shore is held by individuals in the interest of complainant American Steel & Wire Company, which is one of the shippers over its line. Some officers of complainant are also officers of the South Shore, but receive no compensation from the latter. Other officers and employees, including the general superintendent, devote their time exclusively to the South Shore and receive no salary except from it.

Equipment owned by the South Shore consists of 26 locomotives, 5 passenger cars, 925 freight cars, and 7 company service cars, all standard gauge. The South Shore is a member of the American Railway Association and interchanges with its trunk line connections all of its freight equipment, charges being computed on the current per diem rate. The South Shore collects demurrage from shippers or receivers of freight and issues bills of lading, switching tickets, and transfer slips.

Less-than-carload shipments of freight are handled in trap cars at a charge of $1 per car. The South Shore has no mail or express service. For several years prior to February, 1918, it operated daily between Cleveland and Newburgh, Ohio, two passenger trains in each direction. This service was discontinued in order to save fuel, the street-car facilities being sufficient for most of the passenger traffic.

The South Shore performs interchange switching service; plant and intraplant services for the controlling and affiliated industries; local switching between points on its line; and overhead switching, i. e., as an intermediate carrier between connecting trunk lines. The interchange service performed for shippers and receivers of freight affiliated with the South Shore does not differ from that performed

for independent shippers or receivers, or from the service which would be performed for the former if they were served directly by the trunk lines.

More than 20 shippers and receivers of freight have private sidings connecting with the South Shore, while a considerably larger number use its team tracks. Three are reached through their industrial railroads. Arrangements are being made for the construction of additional industrial plants to be served by the South Shore. A majority of the shippers and receivers served by it have no financial interest of any sort in that road and have access to no other railroad except through it.

The South Shore complies with all federal and state requirements applicable to common carriers. In June, 1914, the Public Utilities Commission of Ohio held that it "is a common carrier and is entitled to all the rights, privileges, and prerogatives, and subject to all the duties and obligations of a common carrier."

The Union, which is in the Pittsburgh, Pa., rate district, was organized in 1894 under the laws of Pennsylvania. It is directly controlled by the United States Steel Corporation through the ownership of all of its capital stock. The tracks operated consist of:

	Owned.	Leased.[1]	Total.
	Miles.	*Miles.*	*Miles.*
Main track	30.703	34.490	65.193
Spurs and sidings	73.801	102.048	175.849
Total	104.504	136.538	241.042

[1] Leased from Monongahela Southern Railroad Company for 999 years, 18.33 miles of main track and 22.986 miles of yard track and sidings; from the Bessemer & Lake Erie Railroad Company for 990 years, 16.16 miles of main track and 79.062 miles of yard track and sidings. The Union maintains the property and pays taxes.

All tracks operated are standard gauge. One hundred pound rails have been used for the main track, but they are being replaced by 130-pound rails. Over 12 miles have been relaid.

The equipment operated consists of:

Kind.	Owned.	Leased.	Total.
Locomotives	137	3	140
Passenger cars	3	.....	3
Freight cars	6,179	11	6,190
Company service cars	65	.....	65
Other equipment:			
Steam shovels 6			
Steam locomotive cranes 6			
Steam wrecking derrick 1			
Miscellaneous 5			
	18	.....	18

The Union performs services similar to those stated above in connection with the South Shore. In addition, it handles a substantial less-than-carload traffic. In connection with the Bessemer & Lake

Erie Railroad it provides regular passenger service for the public between East Pittsburgh and North Bessemer, Pa. It also furnishes regularly a special train service between East Pittsburgh and Universal, Pa., for the accommodation of the employees of the Universal Portland Cement Company, an affiliated company.

The Union is an associate member of the American Railroad Association. Cars are interchanged with trunk line connections on the basis of the current per diem rates. It collects demurrage in accordance with its tariffs.

Bills of lading are not usually issued by the Union, but it is prepared to issue them on local traffic whenever required by shippers. Local traffic is generally handled on switching tickets and movement made by card bill, and the trunk lines issue the bills of lading in connection with interchange traffic.

The Union serves about 14 industries, some of which have narrow-gauge industrial railroads. It has public team tracks at North Bessemer, Universal, East Pittsburgh, Duquesne, Munhall, Best Siding, and Mifflin Junction. During 1918 it participated as an intermediate carrier in switching 63,026 cars, and switched 3,254 cars between trunk line connections and a public dock.

The Union complies with federal and state requirements pertaining to common carriers. It has been declared to be a common carrier by the Public Service Commission of Pennsylvania and by the Pennsylvania state courts.

Upon the record we are of opinion and find that the South Shore and the Union are common carriers subject to the act to regulate commerce and may lawfully receive from their trunk line connections divisions of joint rates or absorptions of switching charges, under appropriate tariffs, such divisions or absorptions to be reasonable. The other issues presented in these proceedings are reserved for determination upon a fuller record.

No order is necessary.

WOOLLEY, *Commissioner*, concurring:

I am opposed as a general course to industrially owned railroads being recognized as entitled to divisions of joint rates or absorption of their switching charges by trunk lines, and my individual views upon this subject have been expressed in earlier cases. In this instance, however, it seems clear that the principle announced by the Supreme Court in *The Tap Line Cases*, 234 U. S., 1, and thereafter followed by this Commission in many decisions, as applied to the facts here of record, establishes the common-carrier status of the two roads now before us, and I therefore concur in the majority report.

No. 9364.

INMAN-POULSEN LUMBER COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY, DIRECTOR GENERAL, ET AL.

Submitted December 10, 1918. Decided October 29, 1919.

1. Rates on fir and hemlock lumber, except rough green fir and lath, also on mining timbers, mine wedges, fence posts, and railroad ties, in straight or mixed carloads, from Portland, Oreg., to points on the Southern Pacific south and east of San Francisco and bay points and to points on the Atchison, Topeka & Santa Fe east of Mojave, Calif., found to have been unduly prejudicial to the extent indicated. Damage not proven and reparation denied.
2. Joint and through rates on all the commodities from Portland to points on the Southern Pacific south and east of San Francisco and bay points and to points on the Northwestern Pacific and El Paso & Southwestern system found to have been unreasonable to the extent indicated. Reparation awarded.

James G. Wilson for complainants.

F. H. Wood, *Ben C. Dey*, and *C. W. Durbrow* for Southern Pacific Company.

R. Walton Moore and *Elmer Westlake* for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainants are four corporations, and the receivers of a fifth, operating lumber mills at Portland, Oreg. By complaint filed October 5, 1916, and later amended, they alleged that the rates on fir and hemlock lumber, also on lath, mining timbers, mine wedges, fence posts, and railroad ties, collectively termed "fir and hemlock lumber" except where lath is specifically mentioned, in straight or mixed carloads from Portland to certain points in California, Nevada, Arizona, and New Mexico, were and are unreasonable, unjustly discriminatory, unduly prejudicial, and violative of the fourth section of the act to regulate commerce. They seek reparation on shipments moving during the statutory period and the establishment of reasonable and nonprejudicial rates. Since the original hearing on April 4, 1917, the Director General of Railroads by his General

Order No. 28 has initiated rates effective June 25, 1918, which exceed those then in effect. By supplemental complaint filed after the hearing the Director General was made a party defendant. Upon complainants' request a further hearing was had regarding changed conditions brought about by federal control. At that hearing complainants declared that no relief for the future was desired.

The destinations indicated are (1) Southern Pacific points in California and Nevada, south and east of San Francisco and San Francisco Bay points, hereinafter termed bay points; (2) Northwestern Pacific points in California; (3) El Paso & Southwestern system points in Arizona and New Mexico; and (4) Sante Fe points east of Mojave, Calif., i. e., in California, Arizona, and New Mexico.

Prior to May 2, 1915, the tariff in effect carried the following general commodity description:

> Lumber, viz: Cedar, Fir, Hemlock, Larch, Pine, Redwood or Spruce (except Manufactured Products of Lumber shown in Group B), Lath, Logs, Mining Timbers, Mining Wedges, Fence Posts, and Railroad Ties, straight or mixed carloads,

referred to in this report as "fir and hemlock lumber." It also carried a special lumber description put in pursuant to our findings and order of June 22, 1911, in *Oregon & Washington Lumber Mfrs. Asso.* v. *S. P. Co.*, 21 I. C. C., 389, reading, "Lumber, Rough Green Fir, and Lath." It also carried other special commodity descriptions. The history of the rates, which are stated in cents per 100 pounds, is set forth below:

Commodity.	Destination.	Rate from—		Effective date.
		Willamette Valley.	Portland.	
		Cents.	*Cents.*	
Fir and hemlock lumber	San Francisco; bay points; points south and east of bay points.	25	25	Prior to May 2, 1915.
Lumber, rough green fir, and lath.	Bay points	17.5	25	Do.
Lumber, rough and dressed	Points intermediate to bay points	25	25	Do.
Lumber, rough green fir, and lath.	do	17.5	25	May 2, 1915.
Do	Bay points and points intermediate thereto.	17.5	21.5	Sept. 1, 1915.
Fir and hemlock lumber	do	17.5	21.5	Oct. 22, 1915.
Do	Santa Fe points	(1)	(2)	Do.
Do	Southern Pacific points south and east of San Francisco.	(1)	.....	Oct. 17, 1916.
Do	Certain Southern Pacific points south and east of San Francisco.	.....	(2)	Do.
Do	San Francisco and points north of Marysville.	20	20	Mar. 15, 1917.
Do	All points south and east of San Francisco and bay points.	(3)	(3)	Present.

[1] 17.5 cents plus rate from bay points.
[2] 21.5 cents plus rate from bay points.
[3] Combination on bay points.

It will be seen from the above table that prior to September 1, 1915, the rates on "Lumber, rough green fir, and lath" from the Willamette Valley to bay points and points intermediate thereto was 7.5 cents lower than from Portland. The 17.5-cent rate from the Willamette Valley was published in compliance with our order in *Oregon & Washington Lumber Mfrs. Asso.* v. *S. P. Co., supra.* On September 1, 1915, the difference in these rates from Portland and the Willamette Valley was reduced to 4 cents by the reduction of the Portland rate to 21.5 cents. On October 22, 1915, the commodity description of "Lumber, Rough Green Fir, and Lath" was changed to "Lumber, Fir, and Hemlock, also Lath, straight or mixed carloads" and thus included rough green fir. On October 17, 1916, this commodity description was enlarged to include "Mining Timbers, Mining Wedges, Fence Posts, and Railroad Ties, straight or mixed carloads."

The adjustment of October 22, 1915, whereby the rates on rough green fir from the Willamette Valley and Portland to San Francisco and bay points and points intermediate thereto were made applicable on all fir and hemlock lumber, as well as lath, in straight or mixed carloads, resulted in combinations from both the Willamette Valley and Portland lower than the established through rates to points on the Southern Pacific east and south of San Francisco and bay points, and lower than the joint rates to points on the El Paso & Southwestern and the Northwestern Pacific beyond the bay points. As there were no joint rates to points on the Santa Fe it also resulted in combination rates 4 cents higher from Portland than from the Willamette Valley to points on that line.

In order to eliminate all fourth section violations the Southern Pacific on October 17, 1916, amended its tariff so that the rates to points on its line east and south of the bay points were made on basis of the lowest combination, but when the through rates of 25 cents from Portland and the Willamette Valley were lower than such combination the through rates remained in effect. This resulted in rates from the Willamette Valley to these points one-fourth of a cent to 4 cents per 100 pounds lower than the rates from Portland to the same points. Before this change became effective the complainants filed a protest with the Commission, but on the showing thus made the Commission declined to suspend the rates and the complaint herein was then filed.

The following table shows the joint rates on fir and hemlock lumber, in straight or mixed carloads, in effect from Portland to points on the Northwestern Pacific and the El Paso & Southwestern, and the combination rates from and to the same points resulting from the changes in the rates from Portland to the bay points:

To—	Joint rates from Portland.	Local rates from San Francisco.	Combination rates in connection with 21.5-cent rate to San Francisco between Oct. 22, 1915, and Mar. 15, 1917.	Combination rates in connection with 20-cent rate to San Francisco since Mar. 15, 1917
Northwestern Pacific R. R.:	*Cents.*	*Cents.*	*Cents.*	*Cents.*
San Rafael, Calif.	30	5	26.5	25
Black Points, Calif.	30	5	26.5	25
Sears Point, Calif.	29	5	26.5	25
Petaluma, Calif.	30	5	26.5	25
Penn Grove, Calif.	30	7	28.5	27
Sebastopol, Calif.	30.5	10	31.5	30
Guernerville, Calif.	36.5	16	37.5	36
Rio Campo, Calif.	36.75	16	37.5	36
El Paso & Southwestern system:				
Douglas, Ariz.—				
Prior to Feb. 28, 1917.	72	50	71.5	70
Feb. 28, 1917, to Apr. 9, 1918, inclusive.	[1] 71.5	50	71.5	70
On and after Apr. 10, 1918.	67.5	50	71.5	70

[1] During the period May 4, 1917, to Apr 9, 1918, inclusive, rate on fir lumber, straight carloads, was 68.75 cents.

These violations of the fourth section of the act were not protected by any application or authorized by us and were unlawful. A tariff check indicates that they have been eliminated. As stated before, while the rates in effect from October 14, 1915, to March 11, 1917, the period during which the shipments moved to points on the Northwestern Pacific and El Paso & Southwestern, and to points on the Southern Pacific prior to October 17, 1916, were the same from Portland and the Willamette Valley, the combinations of the intermediate rates from Willamette Valley points were lower than the through rates contemporaneously in effect from Willamette Valley points and lower than the through rates also in effect from Portland.

The complainants contend that the rates from Portland were unreasonable to the extent that they exceeded the aggregate of the intermediate rates contemporaneously in effect from Willamette Valley points. The mere fact that the rates from one point exceeded the aggregate of intermediate rates from another point does not establish that the rates from the first point were unreasonable.

We do find, however, that the rates on fir and hemlock lumber, also on lath, mining timbers, mine wedges, fence posts, and railroad ties, straight or mixed carloads, from Portland to points on the Northwestern Pacific Railroad and El Paso & Southwestern system were unreasonable to the extent that they exceeded the aggregate of the intermediate rates, subject to the act to regulate commerce, contemporaneously in effect. We also find that during the period from October 22, 1915, to October 17, 1916, the through rates on the same commodities and from September 1, 1915, to October 22, 1915,

the through rates on lumber, rough green fir, and lath from Portland to points on the Southern Pacific south and east of San Francisco and bay points were unreasonable to the extent that they exceeded the aggregate of intermediate rates, subject to the act to regulate commerce, contemporaneously in effect.

We further find that complainants, except the East Side Mill & Lumber Company, made numerous shipments from Portland to the destination territory indicated within the statutory period and paid and bore the charges thereon; that they have been damaged and are entitled to reparation to the extent that the charges paid exceeded those that would have accrued on the basis of the rates herein found reasonable. The exact amount of reparation due can not be determined on this record and the complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

The issue remaining for consideration is whether the difference in the rates from Portland and the Willamette Valley to Southern Pacific points south and east of San Francisco and bay points, and to Santa Fe points east of Mojave was unduly prejudicial to complainants, and if so whether complainants are entitled to an award of reparation in respect thereof.

In *Inman-Poulsen Lumber Co.* v. *S. P. Co.*, 42 I. C. C., 275, decided November 29, 1916, we found that the rates on fir and hemlock lumber and lath from Portland to San Francisco and bay points and to points north thereof to and including Marysville, Calif., were unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect on like traffic from Willamette Valley points. As stated above the rates here attacked are in most instances the lowest combinations and the finding of undue prejudice with respect to the rates to San Francisco and bay points is necessarily reflected in the rates here under consideration. Following *Inman-Poulsen Lumber Co.* v. *S. P. Co.*, *supra*, and upon this record we find that the rates on fir and hemlock lumber, except rough green fir and lath, also on mining timbers, mine wedges, fence posts, and railroad ties, in straight or mixed carloads, from Portland to points on the Southern Pacific south and east of San Francisco, between October 17, 1916, and March 14, 1917, both inclusive, and on the same commodities to points on the Atchison, Topeka & Santa Fe east of Mojave, between October 22, 1915, and March 14, 1917, both inclusive, were unduly prejudicial to the extent that they exceeded

the rates contemporaneously in effect from Willamette Valley points to the same destinations.

In *Oregon & Washington Lumber Mfrs. Asso.* v. *S. P. Co.*, *supra*, we prescribed a rate on rough green fir lumber and lath from most of the points in the Willamette Valley to San Francisco and bay points 7.5 cents lower than that applicable from Portland. We do not find that complainants have been unduly prejudiced by the difference in rates on rough green fir lumber and lath.

The burden of proof to establish the fact and amount of damage, traceable to undue prejudice as the proximate cause, rests upon complainants. Evidence on their behalf leaves much to be desired in the way of clearness and definiteness. It shows competition between Portland and Willamette Valley mills; that lumber is sold delivered; that when the rates from Willamette Valley were reduced certain of the Portland mills agreed among themselves, and upon advice of counsel, to quote delivered prices in certain territory, which is not clearly indicated, based on the Valley rates and not on the Portland rates; that the consignees deducted the Portland freight charges from the invoice price; and that complainants lost the difference between such freight charges and those that would have accrued at the Willamette Valley rates. The record nowhere shows that the Valley mills reduced their delivered prices by the amounts of the reduction in their rates, or that they set the price at which complainants were obliged to sell.

We can award reparation for damages resulting from unduly prejudicial rates only where the evidence as to fact and amount of damage would be sufficient to sustain a recovery in court. *Anadarko Cotton Oil Co.* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 43. The evidence before us does not show that the Willamette Valley rates were the proximate cause of any injury which the complainants sustained following the establishment of those rates, or what, if any, was the damage resulting from an injury so caused. In the absence of such a showing, there is no assurance that the relationship between the rates from two originating regions resulted in injury to the complainants. If the carriers had removed the undue prejudice by increasing the rates from the Willamette Valley complainants would still have had to pay the rates they did pay.

Except to the extent indicated, the rates attacked are not found on this record to have been unreasonable or otherwise in violation of the act to regulate commerce.

No. 10930.

CHICAGO WAREHOUSE & TERMINAL COMPANY TERMINAL CHARGES.

FIFTEENTH SECTION APPLICATION No. 8329.

Submitted November 1, 1919. Decided November 22, 1919.

Authority to establish at Chicago, Ill., a terminal charge of 2 cents per 100 pounds to apply on interstate less-than-carload traffic between points beyond Chicago and industries and universal freight stations located on the Chicago Warehouse & Terminal Company, granted.

Luther M. Walter and *S. W. Tracy* for Chicago Warehouse & Terminal Company, and *L. A. Lowrey*, agent for the line haul carriers, applicants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

This proceeding concerns Fifteenth Section Application No. 8329, L. A. Lowrey agent's No. 6, filed by him September 27, 1919, for and on behalf of the Chicago Warehouse & Terminal Company and other carriers not under federal control jointly in connection with carriers under federal control, requesting authority to establish, on one day's notice, at Chicago, Ill., a terminal charge of 2 cents per 100 pounds to apply, in connection with certain requirements as to minimum loading and gross revenue, on interstate less-than-car-load traffic moving under through rates between points beyond Chicago and industries and universal freight stations located on the Chicago Warehouse & Terminal Company. The readjustment proposed has been approved by the Director General for the lines under federal control, and this report will deal with the issue presented with respect to carriers not so controlled.

While no protests against the granting of this application have come to the Commission, it was deemed advisable because of the departure from long-established rate relationships, hereinafter disclosed, which would result from the proposed method of applying the increase sought, and for other reasons, to assign the matter for public hearing at Chicago in order that the parties interested and

affected might have an opportunity to be heard. Such a hearing has recently been had following the usual forms of notice.

The hearing was set under the procedure which contemplates promulgation of the report proposed by the examiner, but such promulgation was waived by the parties, who joined in requesting prompt decision by us.

Applicant Chicago Warehouse & Terminal Company, operating a system of freight transportation through tunnels under the city of Chicago, will be referred to as the tunnel company, and the trunk line railroads entering Chicago, parties to the application, as the line-haul carriers. Unless otherwise stated the rates and absorptions herein referred to will be understood to be in cents per 100 pounds.

A full recital of the facts respecting the physical properties, the corporate and operating relationship between the Chicago Warehouse & Terminal Company and the Chicago Tunnel Company, and the nature of the terminal services performed, will be found in our decision in *Rates in Chicago Switching District*, 34 I. C. C., 234, and for the purposes of this case it is unnecessary to detail them here. This carrier's operations are wholly within the Chicago switching district. It is a party to the Lowrey switching tariff, which generally provides for the application of Chicago rates to and from industries, industrial tracks, and other stations located within the Chicago switching district, whether or not such industry, industrial track, or station is located upon or directly connected with the line performing the road haul. The carriers parties to this arrangement compensate each other for the necessary switching service in the form of divisions or absorptions.

It is here proposed to amend the tariff schedules covering traffic handled via the tunnel so as to provide as follows:

Apply Chicago, Ill., rates plus 2 cents per 100 pounds.

all of which increase would accrue to the tunnel company and be in addition to the division of 7 cents which it is now receiving from the line-haul carriers out of through rates.

The justification advanced by the applicants for the increase sought is the imperative need of the tunnel company for additional revenue to cover the increased cost of maintaining and operating its property, as shown by supporting financial statements later to be considered in this report.

The interstate traffic of the tunnel company is divided into three general classes—that handled at its public receiving stations, denominated "universal freight stations"; that from and to commercial houses and industries located on and having connection by elevators with the tunnel; and that interchanged for the line-haul carriers be-

tween their freight stations with which the tunnel company has connection. In addition there is a relatively smaller movement, which is purely local, of coal to and ashes from hotels, stores, office and other buildings, and of excavated material from building operations within the area covered by the tunnel company. The charges for these local services come under the jurisdiction of the State Public Utilities Commission of Illinois, and are not shown on this record.

The present rate of the tunnel company on the interstate traffic above mentioned is 9 cents, except for that interchanged between railroads on which the rate is 6½ cents. These rates became effective October 1, 1919, under the Commission's Fifteenth Section Order No. 1720, and represent increases over rates previously in effect to the extent shown by the following table:

Merchandise less carload between—	Rates in effect prior to Apr. 6, 1918.	Increased rates authorized by Fifteenth Section Orders Nos. —			Amount of increase present over former rates.
		402	773	1720	
		Rates made effective.			
		Apr. 6, 1918.	Sept. 2, 1918.	Oct. 1, 1919.	
Boat lines, railroads, and industries	4	5	7	9	5
Boat lines, railroads, and universal freight stations	6	6	7	9	3
Railroads	.....	4	4	6½	2½

This statement shows that the tunnel company has increased its interstate rates three times during the years 1918 and 1919.

On traffic handled to and from industries and universal freight stations, to which the increase herein proposed would apply, the rates now in effect are collected from the shipper or consignee if the tonnage forwarded or received by one shipper or consignee, in one day, is less than 6,000 pounds when handled by lines west of Chicago, and 10,000 pounds by lines east, or if the gross revenue accruing to the line-haul carriers is less than $15. If the minima of tonnage and revenue are met the shipper is relieved of any charge and the tunnel company receives its compensation in the form of an absorption by the line-haul carriers out of the Chicago rate. Under this arrangement, which was voluntarily adopted by the carriers reaching Chicago in 1910 in connection with the establishment of the Lowrey tariff and has remained in effect to the present time, shippers served by the tunnel company have been accorded flat Chicago rates as to their shipments meeting the tonnage and revenue requirements referred to, the same as shippers served by other car-

riers within this district. In *Rates to or From Certain Points in the Chicago Switching District*, *supra*, by tariff supplements filed to become effective during September and October, 1914, the line-haul carriers proposed to cancel certain through routes and joint rates in connection with the tunnel company. This proposal was protested by numerous shippers and receivers of freight in Chicago and we decided that, upon all the facts, circumstances, and conditions disclosed by our investigation in that case, unlawful discrimination against the tunnel company and the shippers served by it would result, and ordered continuance of the then existing arrangements. This order has expired by limitation but the line-haul carriers have not since that time sought either to cancel the through rates or to increase them above the Chicago basis, except to the extent proposed in the application now before us. No change in the conditions disclosed by our previous investigation has been shown in this case.

In the past the divisions paid by the line-haul carriers to the tunnel company have been measured by the amount of the latter's local interstate rates, and these divisions have been increased progressively with the increases in the tunnel company's rates up to 7 cents, which is the present division and all that it now receives on shippers' traffic handled in volume as indicated above. In connection with the increase in the rates of the tunnel company from 7 to 9 cents, effected October 1, 1919, it is stated that the line-haul carriers declined to increase their absorption on the ground that their earnings on this traffic under present rates would not warrant it; hence the proposal to establish a terminal charge of 2 cents in addition to the Chicago rate, to be assessed against the shipper.

Exhibits showing operating revenues and expenses and tonnage handled for the nine-months period ending September 30, 1919, and expenditures for additions and betterments and net financial results from operation covering the period from January 1, 1910, when the tunnel company commenced actively to engage in transportation, to September 30, 1919, were introduced by it in support of its request for additional revenue, and appear in the appendix.

These statements are largely self-explanatory. They show generally a steadily increasing operating deficit with a total of $417,865.90, for the period of nine years and nine months referred to, together with a very marked decrease during the past five years in the amounts expended for additions and betterments, and that the carrier has not been self-supporting and must secure additional revenue from some source if it is to continue to serve the shipping public. It is stated that thus far these deficits have been taken care of by the use of moneys set aside for depreciation and the payment of

taxes, the latter amounting to $197,100.12 during the past four years and having remained unpaid for that period.

The president of the tunnel company testified that during the period covered by these exhibits there has also been what might be called deferred maintenance, not represented by expenditures or depreciation charges set up in the accounts, in respect of items which are summarized in the following paragraph.

There have been no rail renewals since initial construction to offset the wear and tear thereof, and eventually the bottom of the tunnel will have to be rebuilt and new rails laid. To cover this item it is estimated that a sum of not less than $30,000 per annum should be reflected in the statement of operating expenses. In like manner the following expenditures are alleged to be necessary: New trolley wire, $6,000; crossings and switches, $10,000; elevator renewals, $18,000; all per annum. It is further stated that other items which have been charged to depreciation of equipment have been figured on the basis of prices paid for material and labor 10 years ago, and that these costs are now much higher. As to these items it is estimated that at least $30,000 additional per annum should be charged on the books in order to put the carrier in a position to renew equipment as it becomes necessary. These figures total $94,000 per annum, and on this basis the total operating deficit of the tunnel company would be more than three times as great as that shown by the appended exhibits.

He further testified that "there is absolutely no chance of getting any additional money from the owners of the property. In the first place there was expended in the construction of the property some $30,000,000, which has not paid a cent of interest or return of any kind during all of this period, and in addition, as has been shown, we have expended $850,000 for additions and betterments, and the stockholders have flatly refused to pay anything more, and say the property must at least earn its operating expenses; and if we are to continue operation it will also have to earn the cost of renewing the different facilities."

Apparently the most acute situation now confronting this carrier is with respect to the demand for increased wages on the part of its operating employees. Its trains are electrically operated and the motormen and some of the other employees in the tunnel have usually received wages similar to those paid by surface and elevated streetcar lines in Chicago. These latter lines have recently granted substantial increases in wages to their men and the tunnel company has received similar and pressing demands from its employees. These demands are regarded by the carrier as reasonable and it is stated would be granted if it was in position to do so. It has held its men

in line and continued operations thus far, it is stated, by a frank disclosure of the financial condition of the tunnel company; by informing them of the effort to obtain increased revenue, which if obtained would be shared with them; and that if they should discontinue work meanwhile it would be necessary to close up the property until assurances of additional revenue were received.

It is estimated that the increased rates here sought, together with the increases which became effective October 1, 1919, will yield additional revenue approximating $17,500 per month, based on the average monthly tonnage for the first nine months of the present year of all merchandise traffic, except that interchanged between carriers. The evidence in this case does not show on what part of the total tonnage referred to the tunnel company received divisions from the line-haul carriers, as distinguished from the traffic on which the charges for the terminal service were billed against the shipper, although our report in the previous case referred to states that charges in addition to the Chicago rate accrue on about 25 per cent of the traffic handled by the tunnel company. If this ratio prevails at the present time, then approximately 75 per cent of the estimated additional revenue would be derived from the increased rates here sought and 25 per cent from those made effective October 1, 1919. The average traffic interchanged monthly between carriers for the first nine months of 1919 was 6,594 tons, on which the rate was increased October 1 from 4 to 6½ cents per 100 pounds, or 50 cents per net ton, which would yield an additional monthly revenue of approximately $3,300, making a total on all interstate traffic of $20,800. Of this amount it is estimated that it will be necessary to expend from $12,000 to $13,000 monthly in additional wages, and that whatever may be left will be fully absorbed by other items of increased operating cost. Rates published by the tunnel company for the interstate movement of merchandise in carload lots, minimum 20,000 pounds, were also increased from 60 cents to $1 per net ton, effective October 1, 1919, under our Fifteenth Section Order No. 1720, but the record shows that there was no movement of this kind during the past year.

Upon being questioned as to why the service of interchange for and between the line-haul carriers was being performed for 6½ cents, while the same carriers were paying the tunnel company 7 cents, in the form of a division, for a similar service in connection with shippers' traffic, witness for the tunnel company stated that the rate on interchange traffic was largely based on, and at the present time was the same as, that charged by teaming companies performing a like service, and that the line-haul carriers did not feel

justified in paying the tunnel company a higher rate; that it was deemed necessary by these carriers that the services of the teaming companies be continued for the handling of certain classes of their interchange business; and that the teaming companies were now endeavoring to secure an increase from the carriers to 9 cents, as was the tunnel company in respect of both the rate for interchange and the division on traffic handled for shippers. Obviously any increase which might be received by the tunnel company for either of these services would supplement their revenues to that extent.

It will be noted from the statement of operating revenues and expenses that while there is a separation of the earnings derived from local intrastate operations, hereinbefore mentioned, there is no separation of the operating expenses properly chargeable to this traffic such as to indicate whether or not it pays its way or is to any extent a burden upon interstate commerce.

The attitude of the shippers represented at the hearing was voiced by a witness appearing on behalf of the Chicago Wholesale Grocers Exchange, in which organization are included eight wholesale dealers in groceries using the tunnel service. He testified that upon the receipt of notice of the proposed increase a committee was appointed by the exchange to investigate and report thereon; that it found from an examination of the records of the tunnel company that it was operating under a continual loss; that in view of the prevailing situation respecting the high cost of labor and material this loss would in all probability be largely augmented; that this carrier by reason of its location under the streets of a large and greatly congested city like Chicago was rendering a service valuable alike, in their opinion, to shippers of freight and to the general public, as well as to the line-haul carriers in the form of increased terminal facilities; that upon analysis and comparison of the methods of delivery to the line-haul carriers by team and by tunnel it appeared to be practically impossible for the railroads to render these wholesale grocers even half efficient service in the handling of merchandise if delivered by team; and that the committee was unanimously of the opinion that the tunnel company should be continued in operation and be assisted to become self-supporting. The following resolution, adopted by the exchange was read into the record at the hearing:

The shippers and receivers of freight at points in the Chicago district over the Chicago Tunnel are opposed to any increase over the Chicago rate as an ordinary rule of practice, but we recognize the financial difficulties at the present time of the tunnel and are willing as a temporary measure, to pay two cents over the Chicago rate, with the distinct understanding that we may, at any time in the future, take the matter up with a view to having all our

shipments move on the Chicago rate. This appearance here is without prejudice to our taking any action in the future that we may be called upon to take.

We ask the Commission to so adjust the tariffs or the accounting practices of the carriers as to make it certain that the additional two cents will be paid by the Chicago shipper or receiver and not be billed to or collected from our customers outside of Chicago; the two cents in all cases to be collected by the Tunnel Company from the Chicago shippers and receivers.

The tunnel company, as well as the shippers served by it, takes the view that, as a general proposition, the existing arrangements should be continued and the cost of the terminal services absorbed by the line-haul carriers. Neither in the former case nor in this had or have we before us the question of divisions or absorptions out of the line-haul rate, and there is nothing in this record respecting the matter of earnings under existing rates or the relative cost of the service performed by the respective carriers in connection with this particular traffic to indicate whether the line-haul carriers should or should not be required to continue to absorb an amount sufficient to cover the advancing costs of the terminal service, even though it be assumed that the necessity of additional revenue on the part of the tunnel company is established. Therefore, our action in this case is not to be construed either as concluding that question or reversing our former decision on the issues therein presented. The testimony of the president of the tunnel company holds out to the shippers the prospect of a return to the present rate basis if in the future this carrier is able to secure the revenue necessary to cover its proper operating costs in the form of divisions by the line-haul carriers.

The imperative need of the applicant tunnel company for additional operating revenue is clearly proven, and the measure of the proposed increased rate has been shown to be reasonable. While the line-haul carriers hold themselves out under the published tariffs to perform certain transportation to and from Chicago, including the necessary terminal services, the shippers here most affected have by their appearance in support of the application as well as by their testimony evidenced the fact that the service accorded by the tunnel company is of especial value in the conduct of their business and in all probability more advantageous than that generally accorded shippers who are served by the carriers' ordinary team-track and freight-house facilities, from the standpoint of prompt and efficient handling of their traffic not only but from a financial standpoint as well. Due to the general increase in the cost of labor during the past year the cost of drayage in Chicago has increased. Obviously the application of rates to points served by the tunnel company higher than to points in Chicago not so served will result in some disparity between the rates to these two different classes of shipping points, but it does not appear from this record that such disparity

will effect undue prejudice to the shippers using this special service. Upon all the facts of record we conclude and find that the application should be granted, and it will be so ordered.

Because of the urgency of the situation, and in the absence of a showing that any interest will be adversely affected thereby, the order in this case will permit filing of the increased rates upon one day's notice, as prayed for in the application.

As at present advised we see no objection to arrangements by the shippers or receivers of freight at Chicago among themselves, or with the carriers, "to make it certain that the additional two cents will be paid by the Chicago shipper or receiver," as contemplated in the second paragraph of the resolution quoted above; but such an arrangement is not properly a subject for tariff provision. The law requires that the tariff shall name just and reasonable rates and charges which shall be collected by the carrier, but does not specify which of the parties to the transportation shall pay them.

APPENDIX.

Chicago Tunnel Company and Chicago Warehouse & Terminal Company operating revenues and operating expenses, nine months, ending Sept. 30, 1919.

Operating revenues:	
Merchandise—	
Public receiving stations	$329, 560 [illegible]
Interchange	58, 531. 74
Commercial houses	216, 043. [illegible]
Total	604, 135. [illegible]
Excavation	23, 43[illegible]
Miscellaneous:	
Coal	16, 740. [illegible]
Cinders	36, 425. [illegible]
Total	53, 165. [illegible]
Other transportation revenue	3, 473. [illegible]
Total operating revenue	684, 212. [illegible]
Operating expenses:	
Maintenance of way and structures	56, 2[illegible]
Depreciation of way and structures	9, [illegible]
Maintenance of equipment	58, 610. [illegible]
Depreciation of equipment	35, 2[illegible]
Power	27, 191. [illegible]
Conducting transportation	406, 544. [illegible]
Traffic	4, 377. [illegible]
General and miscellaneous	82, 1[illegible]
Total operating expenses	679, [illegible]
Net operating income	4, 316. [illegible]
Taxes:	
Capital stock	2, 650. [illegible]
Personal property	29, 377. [illegible]
City compensation (based on percentage of gross revenue)	28, [illegible]
Total	59, [illegible]
Deficit	54, [illegible]

Traffic statistics, nine months ending Sept. 30, 1919.

Cars:	
Merchandise—	
Public receiving stations	176,573
Interchange	48,431
Commercial houses	127,802
Total	352,806
Excavation	8,353
Miscellaneous—	
Coal	8,022
Cinders	16,363
	24,385
Total cars	385,544
Tonnage:	
Merchandise—	
Public receiving stations	236,158
Interchange	59,349
Commercial houses	155,523
Total	451,030
Coal	26,493
Total tons	477,523

Expenditures for additions and permanent betterments, Jan. 1, 1910, to Sept. 30, 1919.

Year.	Amount.	Year.	Amount.
1910	$244,160.68	1916	$25,853.43
1911	14,912.22	1917	39,584.00
1912		1918	16,527.18
1913	354,270.99	1919 (9 months)	6,339.34
1914	140,900.80		
1915	7,668.46	Total	850,217.10

Net results from operation for the same period.

Year.	Deficit.	Surplus.	Year.	Deficit.	Surplus.
1910	$29,169.99		1918	$79,122.05	
1911		$6,479.82	1919 (9 months)	54,690.96	
1912	10,068.81				
1913	82,205.75		Total	424,345.72	$6,479.82
1914	19,511.32			6,479.82	
1915	30,316.79				
1916	31,687.30		Total deficit	417,865.90	
1917	87,572.75				

No. 8827.

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted July 30, 1919. Decided November 26, 1919.

The joint ocean-and-rail and rail-ocean-and-rail rates from Atlantic seaboard territory to Colorado common points, via Galveston, Tex., include insurance against marine risks, but the ocean factors of the combination rates through Galveston do not include insurance. Original report and order, 52 I. C. C., 439, 460, requiring the carriers to make effective rates not in excess of the aggregates of the intermediate rates when lower than the joint through rates modified so as to permit the addition to the former of the cost of marine insurance.

William J. Sedgman and *J. T. Greene* for Mallory Steamship Company.

J. P. Rowan for coastwise steamship lines.

Roscoe H. Hupper for coastwise steamship lines (Southern Pacific lines) and Director General.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

HALL, *Commissioner:*

Among the rates considered by us in the original proceeding herein, 52 I. C. C., 439, were those applying from Atlantic seaboard territory, via Galveston, Tex., to Colorado common points. We held, in substance, that the joint through rates, which were then and are now on a scale of $3.34½, first class, had not been shown to be unreasonable or otherwise unlawful except to the extent that they exceeded the combination rates contemporaneously maintained through the port of Galveston. In the same proceeding we prescribed class rates from Galveston to Colorado common points, which, combined with the class rates from Atlantic seaboard territory by water to Galveston, would produce through rates lower than the joint rates by 13 cents on first class and 3 cents on second class. On all other classes the combination rates would exceed the joint through rates.

In requiring the carriers to make effective rates not in excess of the aggregates of the intermediate rates when lower than the joint rates we were dealing only with the rate relation, without having before us

on the record the matter of marine insurance. That matter was later brought to our attention and we reopened the proceeding for further hearing in order to ascertain the bearing of marine insurance upon the application of the rates made necessary under our order.

In accordance with a long-established custom the joint ocean-and-rail rates from New York and Atlantic seaboard territory to Colorado common points, applicable via Gulf ports, include insurance against marine risks. The local tariff applicable on traffic to Galveston provides that the rates do not include marine insurance, but that the shipper may if he desires effect such insurance through the water carriers, under open policies carried by them, at a premium rate of 15 cents per $100, with a minimum charge of 25 cents.

Although not definitely appearing upon the record, we understand that water carriers between New York and Galveston carry policies of marine insurance to cover cargo "moving under rates of freight which include insurance or which may be insured by the carrier for account of shippers or consignees requesting insurance prior to sailing"; that in the event of loss the carrier collects from the insurance company and in turn settles with those whose shipments were covered, either because moving on a joint rate which included insurance, or because insured for their account by the carrier before sailing; and that in port-to-port traffic the bill of lading is indorsed "insured" or "uninsured," and if the latter no recovery can be had either by the carrier under its blanket policy or by the shipper.

The position of the carriers is that in ascertaining whether the combination on Galveston is lower than the joint rate the additional insurance premium upon shipments moving under the combination should be taken into account, or, in other words, if use of the lower combination rate plus the insurance premium produces a charge higher than that under the joint rate the latter would be applicable. Under this construction of our order the question whether the joint rate, which includes insurance, or the combination rate, one factor of which does not include insurance, would yield the lower through charge upon a given shipment might depend upon the value of the goods shipped, or the valuation on which, if separately insured, the premium was computed. The joint rate is computed on weight alone, but includes insurance. The intermediates to and from Galveston are also computed on weight, but the marine insurance, if written for the factor to Galveston, is computed on value and not on weight. For example, a first-class shipment weighing 300 pounds and valued at $300 moves from New York to Denver. The through charge for transportation under the joint rate of $3.34½ per 100 pounds, including insurance, would be $10.04, and under the lower combination

rate of $3.21½ per 100 pounds, plus the insurance premium, would be $10.10, or 6 cents more than under the joint rate; if not insured, $9.65, or 39 cents less than under the joint rate. If the shipment was worth but $200 the charge under the combination rate, with premium added, would be $9.95 and thus less than under the joint rate. The carriers urge that in actual practice it would be impracticable to ascertain the value of each shipment in advance of billing, and that in the event of loss due to perils of the sea they would be held responsible, although the rates charged did not include insurance against marine risks.

Strict compliance with the terms of the order entered in connection with the original report would require the carriers to apply rates not in excess of the combination rates whenever lower than the joint rates, irrespective of what might be the through charges for the combined service of transportation and insurance. It is their intention to reproduce in their joint tariff applying on traffic from Atlantic seaboard territory via Galveston to Colorado common points the rates to and from Galveston appearing in their separately published tariffs, to be used when such combination rates are lower than the joint rates. In order that the charges under the two sets of rates may be comparable it is proper to increase the combination rates by the cost of the insurance, or 15 cents per $100 in value. The carriers should therefore include in the rules governing the application of the rates named in the joint tariff a provision to the effect that the rates therein named, whether joint or used in combination, are not applicable on uninsured traffic, and that on such traffic the combination rates named in the separately published tariffs will apply. The following rule, or one of similar import, should appear in the section naming the joint rates:

If the rates in Sections —— and —— (Galveston combination), plus marine insurance, make a lower charge than the rates named in Section —— (joint rates), the rates in Sections —— and —— (Galveston combination), will apply.

The sections naming the combination rates should explain the conditions under which they apply in terms substantially as follows:

If the rates in Section —— (joint rates) make a lower charge than the rates in Sections —— and —— (Galveston combination), plus marine insurance, (See note), the rates in Section —— (joint rates) will apply.

NOTE.—To the charges arrived at by the use of the rates named in Sections —— and —— (Galveston combination) there will be added a charge for marine insurance at premium rate of 15 cents per $100 value, with a minimum charge of 25 cents.

The order heretofore entered will be modified accordingly with permission to publish these rules on not less than five days' notice.

55 I. C. C.

No. 9798[1].

PORTSMOUTH ASSOCIATION OF COMMERCE, INCORPORATED,

v.

SEABOARD AIR LINE RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 4, 1919. Decided November 24, 1919.

Upon complaints which allege unlawfulness in the addition of switching charges of the joint terminal of the defendant carriers, the Norfolk & Portsmouth belt line, to the rates on lumber and forest products from certain points in North Carolina and Virginia to deliveries in the Norfolk district, Va., when such deliveries are made by the belt line or through it as an intermediate carrier, whereas, such charges are not added for deliveries of similar shipments to industries on the belt line, or deliveries to industries beyond the belt line, but requiring intermediate switching via that line on competitive traffic, nor from the same points on shipments of other commodities, Held:

1. That the record does not show that as to the corporate defendants such total charges were or are unreasonable under section 1 of the act to regulate commerce.
2. That the individual carrier corporations have not subjected these complainants or this commodity to undue prejudice or disadvantage under section 3 of the act to regulate commerce in the specific manner and form as alleged in the complaints.
3. That under the federal control act, it is and for the period of federal control will be, unjust and unreasonable to collect such charges from the shippers or consignees in addition to the line-haul rate under conditions set forth in the report. Reparation denied.

J. H. Fishback for complainants.
Frank W. Gwathmey and *R. Walton Moore* for defendants.
Charles J. Rixey for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

AITCHISON, *Chairman:*

These two cases involve common issues, were heard together, and will be disposed of in one report. The cases were made the sub-

[1] This report also embraces No. 9933, Rowland Lumber Company et al *v.* Same.

ject of a proposed report, prepared by the examiner who heard the evidence, which has been brought to the attention of all parties.

The complainant in No. 9798 is a corporation organized to promote the industrial welfare of Portsmouth and vicinity; the complainants in No. 9933 are corporations, copartnerships, and individuals engaged in shipping lumber and forest products from points in North Carolina to the Norfolk district, or in receiving such shipments at the latter place. In each case the complaint alleges violation of sections 1, 2, and 3 of the act to regulate commerce; and in No. 9933 reparation is sought. The railroad corporations named as defendants are the Norfolk & Portsmouth Belt Line Railroad Company, herein referred to as the belt line; the Seaboard Air Line Railway Company, the Atlantic Coast Line Railroad Company, the Southern Railway Company, and the Norfolk Southern Railroad Company, hereinafter referred to as the Seaboard, Coast Line, Southern, and Norfolk Southern, respectively; the Norfolk & Western Railway Company; and the Virginian Railway Company. At the hearing the complaints against the two defendants last named were dismissed, and the charge that the other defendants violate section 2 was withdrawn.

The issues presented in the original complaints grow out of the nonabsorption by the line carriers of certain switching charges of the belt line on lumber and other forest products in the Norfolk, Va., district. This district, for the purposes of this report, embraces communities and terminals grouped about the mouths of the Elizabeth River and its tributaries, near Hampton Roads, Va. The localities to which reference is made are known as Port Norfolk, Pinners Point, Portsmouth, Berkley, South Norfolk, Norfolk, and Sewalls Point. Each railroad company named as defendant has a terminal in this district; each also has rights in a joint terminal, the belt line, as will later be shown.

The complaint in No. 9933 was amended at the hearing to allege the unreasonableness of the through charges, but the record is clear that the principal cause of complaint is the addition of the switching charge of the belt line to the line-haul rate.

Subsequent to the filing of the original complaints, but prior to the hearing, the federal government assumed general control of the principal transportation systems of the country, including the belt line. On June 25, 1918, the Director General of Railroads, in the exercise of power conferred upon the President by the federal control act, prescribed increases in the freight rates throughout the country of approximately 25 per cent. On lumber and other forest products the increase was not to exceed 5 cents per 100 pounds. The order of the Director General is more fully recited in *Pacific Lumber Co.* v. *N. W. P. R. R. Co.*, 51 I. C. C., 738, 764–766. By supplemental

complaint, after the hearing, the Director General was made a defendant in this proceeding.

The answer of the Director General denies generally his responsibility for any violation of law as alleged in the supplemental complaint, and that complainant is entitled to relief. He consents to our determination of the issues upon the record already made in so far as the same is relevant. No further hearing was asked and none has been held. Exceptions to the proposed report were filed by both the complainant and the Director General. The defendant corporations filed no exceptions.

The Director General lays particular stress upon the question as to what, under the pleadings and the statements of counsel at the hearing, is really at issue in these proceedings. The following are, in substance, the matters of complaint which are alleged to constitute violations of sections 1 and 3 of the act to regulate commerce:

1. That defendants refuse to absorb belt line switching charges on shipments of lumber and other forest products from the restricted territory, hereinafter more fully described, when destined to industries on the belt line, while they do absorb the belt line switching charges on all other traffic from the restricted territory, and likewise absorb belt line switching charges on trap-car shipments. The evidence herein relates only to the movement of carload lots.

2. That the defendants refuse to absorb the switching charges of the belt line on lumber and other forest products from noncompetitive points in the restricted territory, when destined to industries on the lines of carriers other than the belt line, which require intermediate switching by the belt line from the line-haul carrier to the terminal carrier, while they do absorb the belt line switching charges on similar shipments when originating at competitive points.

3. A somewhat different situation is presented of record under the supplemental complaint filed as against the Director General, under the federal control act; and it is important to bear this distinction in mind.

The supplemental complaint sets out the assumption of federal control over the defendant railroad carriers and alleges that since the filing of the complaint the rates for the transportation of lumber and forest products from the restricted territory in North Carolina and Virginia to Norfolk and Portsmouth have been materially advanced under General Order No. 28. It alleges that as a result the total charges made up of the rates for the line haul plus the switching charge over the belt line—

> * * * and which total charges are in this proceeding attacked by complainant as unlawful, unreasonable, unjust, and unjustly discriminatory, have been very materially increased, thereby increasing the injustice and unlawfulness of the charges assessed against lumber and forest products on

shipments moving from said states of North Carolina and Virginia to Norfolk and Portmouth, involving a switching movement over the Norfolk & Portsmouth Belt Line Railroad Company, as described in the original complaint.

The averment in the supplemental complaint to the effect that the result of this situation is unreasonable and unjust is sufficient, under section 10 of the federal control act, to raise the issue as to these matters pleaded in the complaint, considered in connection with the additional matters set forth in the supplemental complaint.

The complaints, in so far as they allege a violation of section 3 of the act to regulate commerce can be disposed of in comparatively small compass. Under this section it is clear that the prejudice to be undue and unlawful must ordinarily be such that it is a source of advantage to the party alleged to be favored and a disadvantage to the other party; and that generally a competitive relation between the parties must appear. *California Walnut Growers Asso.* v. *A. & R. R. R. Co.*, 50 I. C. C., 558.

In *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C. C., 455, 467, we said:

> It does not appear that coal and coke are competitive with other traffic moving into Richmond and the absorption of switching charges on certain traffic and not upon other traffic is not in itself unduly discriminatory. *Cattle Raisers' Asso. of Texas* v. *F. W. & D. C. Ry. Co.*, 7 I. C. C., 513.

There is no showing of competition between forest products and any of the commodities on which the charges of the belt line are absorbed. On brief, complainants concede the soundness of the above findings, but contend that the collection of the switching charge on forest products and not on other commodities is unjust and unreasonable.

Nor, from this record, can we find that a rate made up of the aggregate of the rates for the line haul and for the terminal service is unreasonable, but that a charge equal to the line-haul rate would be reasonable. We can not say that from nonabsorption territory, the distances ranging up to 300 miles, through rates varying from 3 to 10 cents per 100 pounds with a uniform addition of $3 per car, are unjust and unreasonable, and forbidden by law, but would be brought within the limits of justness and reasonableness and be protected by law if shrunk evenly $3 on each car. The border line between reasonableness and unreasonableness in this case is not so sharply marked as to permit such refinement. As it is not shown that the aggregate of the rates for the line haul and for the terminal service is unreasonable we could not require the absorption of terminal charge. *Richmond Switching Case*, 30 I. C. C., 552, 559.

However, while the issues laid by complainants against the corporate defendants based on the alleged violations of the act to regulate commerce, can not be sustained, and are not so framed as to embrace

the material matters developed in the evidence, the facts disclosed by the record must be considered with respect to the issues raised by the supplemental complaint against the Director General.

The situation now before us can well be described by quoting from our report on rehearing in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C. C., 455, 457–459, decided April 28, 1917:

> On traffic to industries situated on the Norfolk Belt Line * * * the defendant carriers have consistently absorbed the switching charges on carload traffic indiscriminately, whether to or from local or common points, other than on certain forest products originating at near-by Carolina producing points. * * * Petitioners allege that their relationship with the belt line at Norfolk is such that it is in substance a joint terminal. * * *
>
> * * * The Norfolk & Western and the Virginian, operating in connection with the Norfolk Southern, alone enter Norfolk proper. Prior to the construction of the belt line, the rails of the Coast Line, Seaboard, and Southern terminated at Portsmouth. Freight destined to Norfolk had to be ferried across the Elizabeth River, unless it was moved back to Kirby, a junction point with the Norfolk & Western, which required an extra haul of over 40 miles. To overcome this difficulty, and in order that the southern carriers, together with the New York, Philadelphia & Norfolk and the Chesapeake & Ohio, might more conveniently reach those industries situated in Norfolk, the plan of constructing a belt line was inaugurated. That belt line, as finally completed in 1898, extends from the junction point of the New York, Philadelphia & Norfolk and the tracks of the Norfolk & Carolina Railroad Company, now a part of the Coast Line, at Pinners Point, Va., around the southern edge of Portsmouth, and across the south branch of the Elizabeth River, to a connection with the Norfolk & Western at Berkley, in all a distance of 5.8 miles. Subsequently the Elizabeth River Railroad, extending south about 7 miles from a connection with the belt line in Berkley, became a branch of the belt line. The belt line, under a lease from the Southern Railway, also operates a spur 1.8 miles in length, extending into the city of Portsmouth. Freight coming from or destined to industries in Norfolk proper over any of the southern routes now reaches Norfolk via the belt line and the Norfolk & Western bridge over the eastern branch of the Elizabeth River.
>
> It is the view of petitioners that the property of the belt line is simply the joint property of the owning lines, and that, therefore, each of such lines has an equal right of access to the industries located thereon, a right which makes such industries the terminals of each owning line.

After considering the history and organization of the belt line, we said, on page 460:

> * * * We are of opinion and find that the belt line is a part of the line of each of the owning carriers for terminal purposes. It is of no consequence that the carriers do not directly own the belt line, but each merely its allotted share of the stock, nor that a charge of $1.50 is made in their respective tariffs for deliveries to industries located thereon. Each owning carrier contributes to the expenses of operation in the form of absorbing this switching charge, but it is simply a financial method of prorating the cost of the belt line's maintenance and operation. In substance, it is nothing more or less than applying the line-haul rate to industries situated on the belt line, a practice which is not uncommon where the line-haul carrier owns the terminal

severally. * * * We are of opinion and find that the industries located upon the belt line must be treated as situated on the joint terminals of all the owning lines.

The defendants in the present proceeding admit the accuracy of these findings. On page 461 of that report we stated what have now become the substantial grievances of the present complainants:

There are * * * instances, however, where the defendants fail to absorb the switching charges to industries on the belt line. * * * Defendants * * * refuse to absorb the switching charges on certain forest products from near-by Carolina points destined to industries on the belt line, on the ground that the revenue from this traffic is too thin to make such absorption possible. Neither point is directly in issue; * * * nor are there sufficient facts in this record for us to determine whether the refusal to absorb on forest products is unlawful.

It appears that it is the practice of the owning carriers at Norfolk to refuse to absorb the switching charges of the belt line on intermediate switching of noncompetitive traffic. The carriers will be expected to remedy this inconsistency.

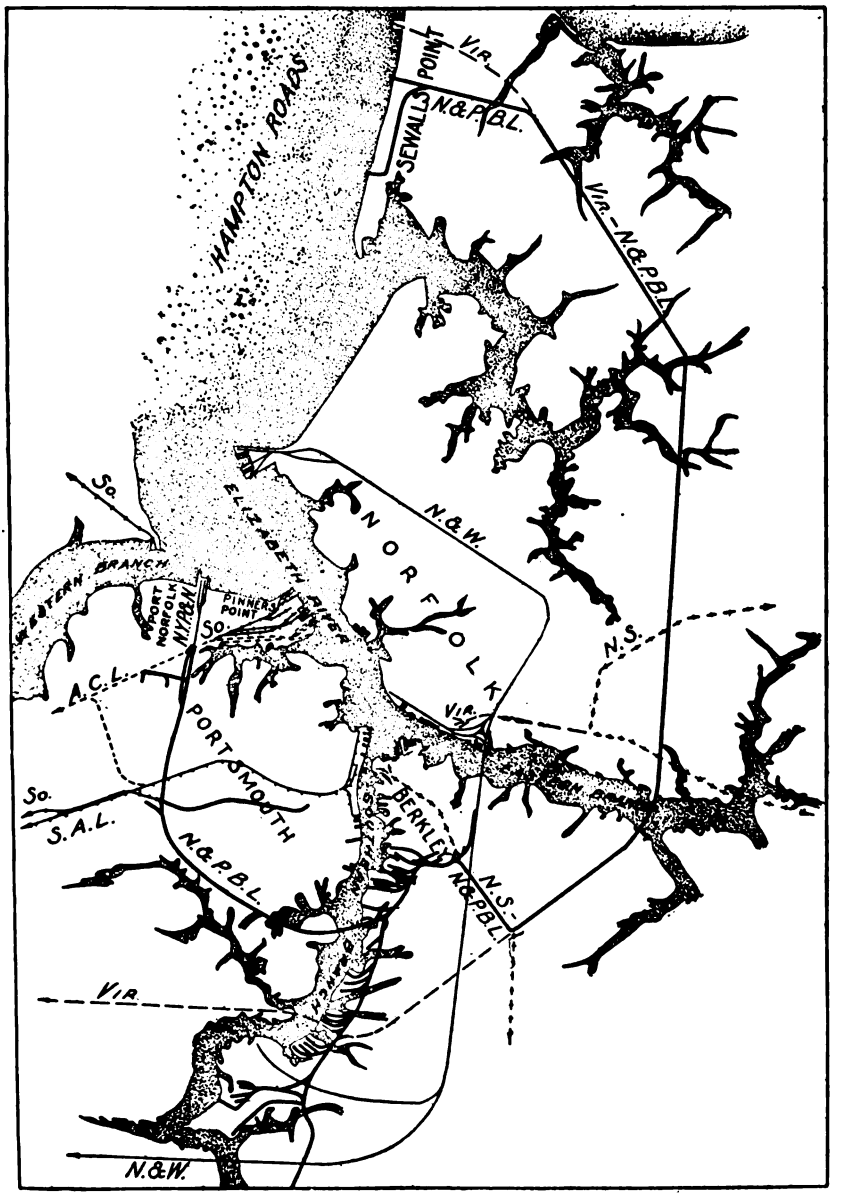
Obviously, what was said in that report concerning the duty of owning carriers to absorb the switching charges of the belt line on intermediate switching of noncompetitive traffic is a corollary to the claim of those carriers that the property of the belt line is the joint property of the owning lines.

The belt line has been extended beyond the limits described above, as will be seen from the accompanying map. This extension was for the purpose of serving certain municipal docks of Norfolk at Sewalls Point, north and east of Norfolk proper, and was accomplished by leasing trackage rights over the Norfolk Southern for about nine-tenths of a mile southeast from Berkley to a junction with the tracks of the Virginian Railway; by the lease of trackage rights over the latter railway for about 9.8 miles toward Sewalls Point; and by the construction of 2.5 miles of new line from the Virginian's rails to the new docks. The switching charges and absorptions apply to points reached by the extension, but at present the only industries served thereon are at or near the municipal docks. The interests represented by complainants are located in Port Norfolk, Portsmouth, Berkley, and Norfolk, south of the Elizabeth River and its eastern branch, on the older part of the belt line, as it was at the period covered by the report cited.

On June 1, 1917, the belt line charges were increased to $3 per car for switching to or from industries located thereon, and to $2 per car for intermediate switching between the line-haul and the delivering carriers. These complaints were filed shortly thereafter.

With the exception of sand and gravel from particular points to specific deliveries in the Norfolk district, which will not be further noted, the nonabsorption of belt line switching charges for in-and-

out-bound traffic to industries served by the belt line applies only to lumber and forest products; and to these commodities only when they originate at points within an area in North Carolina and in



Virginia. Belt line charges are paid by line-haul carriers whether absorbed by them or not, and the public pays tariff charges to the line-haul carriers, not to the belt line.

The defendants attempt to justify this nonabsorption from various points in North Carolina and Virginia requiring an interstate movement. The Seaboard will not absorb from points north of Durham and Cary, a distance from Norfolk of about 183 miles. The Norfolk Southern does not absorb from points east and north of Colon, a distance from Norfolk of about 283 miles. The Coast Line does not absorb from points on its own rails north of Wilmington, Pembroke, and Maxton, an extreme distance from Norfolk of about 245 miles. The Southern will not absorb from points north and east of Greensboro, an extreme distance from Norfolk of about 270 miles.

Speaking generally, absorption of belt line switching charges is made from all points at which the direct or indirect competition of the Norfolk & Western Railway is felt. The latter and affiliated lines serve Durham and Cary; lumber and forest products forwarded over that line from those points are delivered free of switching charges at any point on the belt line; and the Seaboard in order to compete for this traffic must meet the Norfolk & Western's charges. The Seaboard absorbs switching charges on these commodities from Cary, and also absorbs them on traffic from more distant points, whereby the competitive influence of the Norfolk & Western is extended beyond the territory directly served by it. The Norfolk Southern crosses the main line of the Seaboard at Colon, about 30 miles south of Cary; on traffic from Colon and points west thereof it absorbs belt line switching charges. The Seaboard has rails from Hamlet, about 86 miles south of Cary, which extend eastward through Maxton and Pembroke to Wilmington; the Coast Line absorbs belt line switching charges from those points and from points on its lines south thereof. The Southern competes with the Norfolk & Western at Winston-Salem and other points in the vicinity thereof; Greensboro is intermediate between Winston-Salem and Norfolk via the Southern Railway and the Southern Railway will absorb from all points south and west of Greensboro. The Southern, which now absorbs on traffic from Durham, Cary, Raleigh, Selma, and Goldsboro, announces that in future it will not so provide and, to this extent, refuses to meet the competition of the Norfolk & Western.

The above analysis shows that but for the absorption practice of the Norfolk & Western Railway, and the competition of that carrier for traffic, the defendants would attempt to defend extensions of the area of nonabsorption territory much beyond the limits above set forth. This is in accord with their testimony. The defenses offered by them for refusing to absorb these switching charges on lumber and forest products are as follows: (*a*) The revenue on this traffic is too thin to permit of absorption without decreasing their earnings below the amount to which they are entitled; (*b*) their tariffs do not provide equal rates on lumber and forest products

from these points in North Carolina to all points in the Norfolk district, but are published to specific terminals, delivery beyond which is made, and has always been made, at additional charges; and (*c*) lumber and forest products furnish practically the only traffic originating at points in northern and eastern North Carolina.

Defendants assert that the rates in effect from the nonabsorption territory at the time of the hearing are in no case higher than those in effect in 1898 when the belt line was constructed. They show that in many important instances the rates have been reduced. From this they contend that when the rates were established delivery on the belt line was not contemplated.

Various exhibits were introduced comparing the net revenue per car and per car-mile on lumber and other forest products with other commodities shown to have moved from this territory. These exhibits indicate that the earnings on lumber and other forest products are less than on the other commodities. Elaborate exhibits were also introduced comparing the rates in issue with rates on lumber and forest products in other portions of the country, some of which were prescribed by us.

Complainants compare the rates on lumber and other commodities from other points in the south to points on the belt line and to points beyond Norfolk, but requiring intermediate switching by the belt line. In certain instances the net revenue thus derived by the southern carriers on the basis of the divisions of the joint rates accruing to them, less the switching charge of the belt line, which is absorbed, is less than the revenue from the rates from the points of origin here considered. From this and other exhibits it is argued that the earnings from these rates are not thin, as contended by defendants.

It also appears that on shipments of forest products from points on certain tap lines operating in the nonabsorption territory destined to points on the belt line, the switching charges of the belt line are absorbed, whereas on shipments which originate at the junction points with such tap lines, and from which the rate is greater than the division of the rate which accrues to said road from the point on the tap line, the switching charge is added.

Defendants claim that the switching charges on lumber and forest products, of which complaint is made, are analogous to, and are merely substitutes for, their former and present lighterage charges on those commodities; that prior to the construction of the belt line forest products from eastern North Carolina were lightered only on the payment of $2.50 per car; that this practice, subject to some changes, is still in effect; and that when the belt line was built the imposition of the switching charge of $1.50 per car on lumber and forest products from this restricted district was an actual reduction in total charges for transportation.

Tariffs on file with the Commission do not make it clear what were the practices of these defendants as to absorption of belt line charges prior to August 17, 1908. From that time on the defendants have absorbed, under proper tariff notation, the switching charges of the belt line on all carload traffic from or to sidings, warehouses, or industries located on the belt line, with the exception that no absorption of switching charges was or is made on lumber and forest products originating in northern and eastern North Carolina.

Complainants rely principally on our findings in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, *supra*. They assert that the carriers having successfully urged in that case that the belt line was the terminal of each of the owning lines, and that the line-haul rates contemplated delivery at said terminals, can not now be heard to contend that the line-haul rates should not apply to industries located on the belt line, on lumber and other forest products from the restricted territory hereinbefore described.

In *Chamber of Commerce of Newport News* v. *S. Ry. Co.*, 23 I. C. C., 345, we found that from common points on defendant's lines outside Virginia in associated railway and southeastern freight association territories, 150 miles or more from Norfolk, Newport News was entitled to the same rates as Norfolk. The carriers established rates in compliance with that finding. They also established rates on lumber from local points the same to Newport News and to Norfolk. In that report we said:

> Another suggestion is that by reason of certain switching and other terminal charges applied to traffic originating at or destined to Norfolk, to give Norfolk rates to Newport News would be to place shippers at the latter point in a better position than shippers at Norfolk. But this is a matter for the carriers themselves to guard against in the arrangement and publication of their tariffs. It is sufficient for us to say that our finding goes no further than that Newport News is entitled to be placed and should be placed on an equal rate basis with Norfolk with respect to the southern territory in question.

It was shown by complainants that from certain noncompetitive points within the restricted area, 150 or more miles from Norfolk, the rates on forest products and lumber are the same to Norfolk, Portsmouth, Pinners Point, and Newport News; that on shipments of these commodities to Newport News the intermediate switching service of the belt line is necessary; and that the charges for intermediate switching are absorbed in the through rate to Newport News. On similar shipments from the same points to industries reached by the belt line in Portsmouth, or reached at any point in the Norfolk-Portsmouth district through the belt line by intermediate switching movement, the line-haul carriers do not absorb the belt line charges. In the exceptions filed by the Director General it is stated that had this issue been raised in the pleadings it would have

been shown that the belt line is not a factor in handling traffic to Newport News and that it is not used on such traffic as an intermediate link or otherwise.

The defendants now treat the belt line as their own terminal on all traffic from all points of origin with the exception of lumber and forest products from the restricted territory hereinbefore described and apply the line-haul rate to industries located on the belt line. They likewise treat the belt line as their own terminal on competitive traffic from the restricted territory and absorb on such traffic the switching charges of the belt line when said belt line performs an intermediate service between the line-haul and the terminal carrier. For example, take a shipment of lumber originating at Wilson, N. C., on the Atlantic Coast Line destined to an industry on the Norfolk Southern in Norfolk, moving via Atlantic Coast Line to Pinners Point, thence belt line to connection with Norfolk Southern. Inasmuch as the Norfolk Southern reaches Wilson and is therefore a competitor of the Atlantic Coast Line for this traffic, the Atlantic Coast Line absorbs the switching charges of both the belt line and the Norfolk Southern. If, however, a shipment originated at a noncompetitive point but was handled in the same manner, the switching charges of both the belt line and terminal carrier would be added. As we pointed out in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, *supra*, this was an inconsistency which the carriers would be expected to remedy.

Under a unified and coordinated national control, a continuation of the inconsistency pointed out in the *Richmond Case* is indefensible and unlawful. Section 10 of the federal control act provides, among other things, that in determining any question concerning any rate initiated by the President we shall give due consideration to the fact that the transportation systems under federal control are not in competition. All the carriers defendant herein are under federal control and for present purposes must be treated as a single line. *Kaw River Sand & Material Co.* v. *A., T. & S. F. Ry. Co.*, 51 I. C. C., 350. There certainly can be no present justification for the refusal to absorb on shipments destined to industries on the belt line while at the same time absorptions are made on shipments to industries located on the lines of connecting carriers and in order to reach which intermediate switching by the belt line is necessary.

The Coast Line serves industries at Pinners Point by switching cars of lumber and forest products from points on its rails north of Wilmington, Pembroke, and Maxton, without charge other than that for the line haul; for deliveries of the same commodities to industries located upon the rails of the belt line in Port Norfolk, contiguous to Pinners Point and involving no greater service, the belt line switching charge is added. The Seaboard and the Norfolk

Southern make deliveries of lumber and forest products from the near-by territory above described at industries served by their individual terminals at Portsmouth and at Berkley without additional charge above the line-haul rate, whereas for deliveries to industries similarly situated at Portsmouth and Berkley, which are reached only by or through their joint terminal, the belt line, the charges of the belt line for switching are added to the line-haul rate and paid by the shipper.

The record shows that these receivers of lumber and forest products in the Norfolk district are in competition; that this competition, in some instances, is in the purchase of these commodities at points of origin or in the Norfolk district; in other instances, in their sale in the Norfolk district or beyond, and that the charge for belt line switching, in addition to the line-haul rate, restricts the competition of the receivers who pay it.

Defendants suggest that in proper instances a carrier may publish terminal charges in addition to and separately from line-haul charges. That is not the fact in the Norfolk-Portsmouth district, however, for there the line-haul rates from points in North Carolina provide for and include delivery on the individual terminals of the Coast Line at Pinners Point, of the Seaboard at Portsmouth, and of the Norfolk Southern at Berkley; and it is an undue disadvantage and prejudice to industries located upon the tracks of the joint terminal, the belt line, at Port Norfolk, at Portsmouth, and at Berkley to be charged for switching in addition to the line-haul rate for similar deliveries. See *California Canneries Co.* v. *S. P. Co.*, 51 I. C. C., 500; also *Chicago, M. & St. P. Ry. Co.* v. *Minn. Civic Asso.*, 247 U. S., 490.

The Director General points out the situation that would result if our order was limited in its scope as above indicated. The Atlantic Coast Line would have to absorb switching charges to make deliveries on the belt line at Port Norfolk, contiguous to Pinners Point, but would not have to make similar absorptions to reach an industry located on any other section of the belt line, whether in Portsmouth, Berkley, or Norfolk. In this connection, however, we think it is for the Director General to guard against establishing any rates or charges which would in any way unduly prejudice other industries or localities in that district. It should be clearly borne in mind that these roads are not now being operated as separate units, but as part of a unified and coordinated national system.

It is impossible to touch on all the contentions of complainants and defendants without unduly lengthening this report. We may set forth some of the tariff errors and improprieties to which attention was called on the record. The Southern now makes absorptions which it says it will refuse to make in the future; the Seaboard now

refuses to absorb from points beyond the limits set forth above; and the tariffs of the Coast Line permit the absorption of belt line charges on lumber and forest products originating on certain so-called tap lines north of Wilmington, Pembroke, and Maxton. This is said to be due to an oversight in the publication of the tariffs, and only one shipment is shown which was entitled to that advantage.

Here and in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, *supra*, it was shown that about 85 per cent of all the revenue received by the belt line is paid to it by its owners, the line-haul carriers serving the Norfolk district. The "financial method of prorating the cost of the belt line's maintenance and operation" among these line-haul carriers is of no public importance. The belt line is their joint terminal, and they use its facilities for interchanging traffic and for the receipt and delivery of traffic from and to points on its lines. Regardless of the amounts specified in the belt line's tariffs for its services, any surplus that may accrue as the result of its operations inures to the benefit of its owners, and any deficit resulting therefrom must be assumed ultimately by them. Testimony introduced in behalf of the belt line is to effect that the increase in switching charges from $1.50 per car to $3 per car was needed by reason of increased costs of operation; nevertheless its tariff is inconsistent with this testimony, in that it contains an item which provides a charge much lower than $1.50 per car. Norfolk & Portsmouth Belt Line Railroad Company's tariff I. C. C. No. 36, effective June 1, 1917, and at present unmodified, provides that for the movement of logs loaded on standard freight cars in trainload lots, subject to a minimum of 41 cars per week, to or from connections, all points north of Norfolk & Western main-line crossing, the charge will be $1 per car; and that when shipments in trainload lots are less than the minimum the charge will be $3 per car.

Points north of the Norfolk & Western crossing, for practical purposes, embrace all points on the belt line and involve the least as well as the greatest amount of service rendered by it. Confining the statement to trainload lots, whatever that may mean, a dealer who receives an aggregate of 40 cars of logs during any week has to pay a total of $120, whereas by receiving 1 additional car during that period his payment is reduced to a total of $41. In other words, so far as switching services are concerned, he would be entitled to a refund of $79 for imposing upon the belt line the switching of 1 car in addition to 40. The situation may be illustrated in another way: A dealer in logs who receives 40 cars during a week pays $120 for switching charges, and his competitor who receives 120 cars during the same period pays no more than that. The tariff does not specify how many cars constitute a "trainload lot," nor does it

show how the week is to be computed. Do 2 cars or more constitute a trainload lot? Do the words "41 cars per week" mean an average of that many? Do they mean 41 cars between one Monday morning and the following Monday morning? Would the total charges a dealer would be obliged to pay be $240 or $90 if the cars were received as follows: 5 on Monday, 10 Wednesday, 25 Thursday, a total of 40 from Monday to Saturday, followed by 40 on the next Tuesday, and none thereafter? Would he not have 5 cars at $3 per car and 75 cars at $1 per car; the 75 having moved in trainload lots in the week from Wednesday morning to the following Tuesday night? Manipulation of the grossest kind is obviously possible under such a provision. The tariff should be amended at once by the cancellation of the item relating to trainload lots. *Woodward-Bennett Co.* v. *S. P., L. A. & S. L. R. R. Co.*, 29 I. C. C., 664; and *Wells Lumber Co.* v. *C., M. & St. P. Ry. Co.*, 38 I. C. C., 464, and cases cited therein.

Doubtless the belt line needs $3 per car for switching to and from industries served by it, and $2 per car for intermediate switching from one connection to another. Testimony introduced in its behalf is to the effect that the former general charge of $1.50 per car is not sufficient. The annual report of the belt line for the year ended December 31, 1917, shows that during that period its operating expenses were $299,689.10, and that it handled 197,783 cars paying revenue. This means that the belt line must receive an average of $1.51½ per revenue-paying car handled or it can not meet its out-of-pocket expenses. Shippers and dealers who are in a position to avail themselves thereof may take advantage of a tariff provision for a charge per car much lower than the average required by the belt line for full compensation. If it be urged that these low switching charges on logs in trainload lots were made to induce traffic, the answer would seem to be that the belt line has no traffic of its own, other than switching from plant to plant, and that no carrier has the right to burden other traffic by charges on logs that are lower than full compensation.

In the present state of the pleadings no order may be made against the railroad corporations. As to the Director General, the record presents an issue supported by proof. While the carriers are being operated under a unified and coordinated national control there is no justification for the situation disclosed by this record. The continuance, during federal control, of a policy of saddling the switching charge of the belt line upon the line-haul rates, as to shipments originating in the restricted territory here considered, when destined to industries on the belt line, and of absorbing that charge on competitive traffic from the same territory to industries beyond the belt line, which requires intermediate handling via that line, is inconsistent with the policy that these lines are being operated

as a unified system. The underlying reason the absorption of such charges was made from certain points doubtless was the competition of the Norfolk & Western. But the Norfolk & Western is now a part of the unified system, and is no more a competitor of the other lines under federal control than the right arm is of the left. It can not be said that the Director General competes with himself in the operation of the lines under his control, or that the competition which afforded the excuse for that practice prior to his assumption of control of such carriers should or can be perpetuated by him during such control. Neither can there be any justification for absorbing the charges of the belt line and of the delivering line, which is under federal control, on certain traffic merely because it originates at points served by both the delivering and the initial carriers, or because the originating point is a so-called common point, and refusing to absorb such charges on other traffic which was formerly noncompetitive, but is now more accurately described as tributary to but one of the federally controlled lines.

Upon consideration of all the facts of record we find that under section 10 of the federal control act it is unjust and unreasonable for the defendants to collect from the shippers or consignees the switching charges of the belt line in addition to the line-haul rate on shipments of lumber and forest products from the restricted territory in North Carolina and Virginia requiring an interstate movement when destined to points on the belt line in the Norfolk district as hereinbefore described while they contemporaneously absorb the charges of the belt line on similar shipments originating at points on their lines served by so-called competitive lines under federal control; and that it is unjust and unreasonable to collect from the shippers or consignees on similar traffic destined to points beyond the belt line but requiring intermediate switching by the belt line the switching charge of the belt line in addition to the line-haul rate while contemporaneously absorbing the belt line switching charges on similar traffic from so-called competitive points when destined to points beyond the belt line but requiring intermediate switching by that line. There is no proof of damage on shipments moved during the period of federal control and reparation will be denied.

We will enter an appropriate order.

HALL, *Commissioner*, concurring:

The majority report finds no violation of the act to regulate commerce in the matters alleged and proven, and in that I concur. But under the supplemental complaint by which the Director General was made a party defendant it finds violations of section 10 of the federal control act to have been alleged and proven, and in this finding I do not fully concur.

My understanding is that shipments of lumber and forest products from the restricted territory to industries on the belt line are treated exactly alike, whether they originate at so-called competitive or so-called noncompetitive points in the restricted territory. On all such shipments the belt line's switching charges are not absorbed by the originating carriers. My understanding is further that on shipments of lumber and forest products from the restricted territory to points beyond the belt line, where it performs an intermediate switching, its charges therefor are absorbed or not, according as the point of origin is competitive or not. This distinction does not make a justifying difference under federal control, and while that federal control continues such shipments must be treated alike. To the extent that the majority report accords with these views I concur.

But I understand it to consider and dispose of an issue which to my mind is not presented for determination, growing out of the fact that on lumber shipments from points more remote than the restricted territory, and outside of it, the belt line switching charges for deliveries to industries on its line are absorbed, although not absorbed when the shipments originate in the restricted territory. Whether or not there are reasons which would justify such absorption by a trunk line which has had the longer haul, while not absorbing when it has only the lesser earning on a shorter haul from a near-by point in the restricted territory, is not here for decision, because not raised by the pleadings or developed at the hearing.

Our jurisdiction is one-sided in the sense that our orders run against carriers but not against shippers, and where, as in this case, the Director General has been brought in, after the hearing, by a supplemental complaint which merely alleges that since the filing of the original complaint the rates for transportation of lumber and forest products from the points in the restricted territory to Norfolk and Portsmouth have been materially advanced under his General Order No. 28, with the result that the total charges attacked in the original complaint as unlawful have been materially increased, thereby increasing the unjustness and unlawfulness of the charges originally complained of, the Director General should not be called upon to meet any issue of fact as to other rates, or any issue of law which does not grow out of the act to regulate commerce, or of section 10 of the federal control act as applied to increases initiated by him in the rates assailed in the original complaint. Representing, as he does, all the carriers under federal control, it is peculiarly appropriate that in any particular case he should be clearly apprised by the pleadings in that case of the rates and rate relationships which he is called upon to defend and of the lines of transportation over which they apply.

The majority report also finds in effect that under federal control all belt line switching charges, whether intermediate or for delivery to the industries on the belt line, must be treated alike in the matter of absorption if the shipments, whatever their origin, are of lumber or forest products. That may be desirable, but I do not see that it is imperative, or, differently stated, that section 10 of the federal control act is violated if charges of the belt line for switching to industries on its rails are not absorbed, but are absorbed for intermediate switching when other carriers make deliveries at industries beyond the belt line. To my mind that section requires that, under the issues before us, no distinction be drawn between so-called competitive and so-called noncompetitive points in the restricted territory. Since no such distinction is made in the shipments, as between themselves, to industries on the belt line, no violation results; but since that distinction is made in shipments, as between themselves, to industries beyond the belt line, the law is violated. That violation can be removed either by absorbing all belt line charges for intermediate switching of such shipments for beyond, or by absorbing none of them. And to the extent that upon the pleadings and record here before us the majority finds otherwise I must withhold assent.

The original complaints should be dismissed and an order entered requiring the Director General during the period of federal control to desist from maintaining the unreasonable relationship in transportation charges on shipments of lumber and forest products, in carloads, from the restricted territory to points in the Norfolk district found to result from absorbing the switching charges of the belt line as an intermediate carrier in case the shipment originates at a competitive point in the restricted territory, while not absorbing those charges in case the shipment originates at a noncompetitive point in that territory.

No. 9995.[1]

ATLAS LEATHER MANUFACTURING COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted November 18, 1918. Decided October 29, 1919.

1. Ratings on leatherboard not shown to have been or to be unreasonable.
2. Carload rating on scrap leatherboard of a declared or agreed value not exceeding 3.5 cents per pound found to be unreasonable. Reparation denied.

C. H. Rodehaver for complainants.

William W. Collin, jr., Edward Hart, jr., D. T. Lawrence, and *D. P. Connell for defendant carriers.*

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainants are the Atlas Leather Manufacturing Company. Lancaster Leather Company, and Herkimer Fibre Company, corporations engaged in the manufacture of leatherboard at Caseyville, Ill., Lancaster, Ohio, and Herkimer, N. Y., respectively. By complaints filed December 8, 1917, in Nos. 9995 and 9996, the Atlas Leather Manufacturing Company and the Lancaster Leather Company allege that the fifth-class rating prescribed by the official classification and applied by the defendant carriers to the transportation of carload shipments of scrap leather and scrap leatherboard was and is unreasonable and unduly prejudicial and ask for reparation on interstate shipments which might move to Caseyville and Lancaster subsequent to the filing of the complaint. The Lancaster Leather Company, complainant in No. 9996, also seeks reparation on interstate shipments to Lancaster which moved prior to the filing of the complaint, listed in an exhibit attached to the complaint. In both the establishment in the official classification or exceptions thereto of a sixth-class rating on scrap leather and scrap leatherboard, subject to a carload minimum of 30,000 pounds, is asked. By complaint in No. 10140, filed April 10, 1918, the above-

[1] This report also embraces No. 9996, Lancaster Leather Company *v.* Same, and No. 10140, Atlas Leather Manufacturing Company et al. *v.* Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, Director General, et al.

named companies and the Herkimer Fibre Company allege that the fifth and third class ratings, carloads and less than carloads, respectively, prescribed by the official classification and applied by the defendant carriers to the transportation of leatherboard, in rolls, bundles, crates, or boxes, are unreasonable and ask for ratings of sixth and fourth class on leatherboard, in carloads and less than carloads, respectively. By supplemental complaints filed after the hearing the Director General of Railroads was made a party defendant in all three proceedings. He answered, but no further hearing was asked or had.

The official classification rates scrap leather consisting only of "Leather Refuse from the tanning or from the manufacture of Leather or Leather Goods," when in bags, bales, barrels, or boxes, minimum 24,000 pounds subject to rule 27, fifth class; leather, n. o. i. b. n., minimum 24,000 pounds subject to rule 27, fourth class; leatherboard, less than carloads, third class and, carloads, minimum 36,000 pounds, fifth class; leatherboard scrap, minimum 30,000 pounds, fifth class; and fertilizing compound, manufactured fertilizer n. o. i. b. n., minimum 30,000 pounds, sixth class. Fertilizer material, having value only as a fertilizing ingredient, and including cartridge waste, felt waste, leather skivings, leather waste, and refuse wool, minimum 30,000 pounds, is rated sixth class in exceptions to the official classification, published by agent Morris, and various carriers in their individual exceptions rate fertilizer material, including scrap waste leather and scrap leather not available in the manufacture of leather articles, sixth class.

The following ranges in value per net ton were testified to for complainants: Scrap leather, from $22.50 to $25; refuse wool, from $25 to $40; cartridge and felt waste, from $50 to $60; and scrap paper, wood pulp, and rags, used in the manufacture of paper, from $22 to $105. They also introduced a list of numerous raw materials used in the manufacture of other articles which are rated sixth class or lower in the official classification.

Scrap leather is a low-grade commodity, and a list of shipments submitted with one of the complaints shows car-load weights ranging from 24,000 to 55,900 pounds. The ingredients of the leatherboard manufactured by complainants are leather about 75 per cent, scrap paper 20 per cent, and soda ash 5 per cent. These ingredients are reduced to a pulpy mass and rolled into sheets. Leatherboard is used chiefly as a substitute for leather in the manufacture of shoes. Complainants' principal contention is that the rating on scrap or waste leather used for making leatherboard should not be higher than on the same material used for making fertilizer.

Manufacturers of fertilizer and leatherboard compete in the purchase of scrap leather, and complainants say that the former have an advantage because of the application of the sixth-class rating to fertilizer material. Complainants submitted samples of scrap leather which had moved to a fertilizer factory at sixth-class rates and to a leatherboard factory at fifth-class rates. They were so similar that at the hearing an inspector of the Central Freight Association Inspection & Weighing Bureau who examined them stated that, in his opinion, both should have been rated fifth class.

Defendants apparently concede that such scrap leather as is used for fertilizer is entitled to a lower rating than higher-grade scrap suitable for further use in the manufacture of leather articles, which is much more valuable. They contend, however, that the lower rating generally carried on fertilizer material is due in part to the carriers' desire to encourage agriculture, both for reasons of public policy and because it produces additional tonnage. Some of the carriers have attempted to draw the line between the two classes of leather scrap by making the sixth-class rates applicable on scrap leather "having value only as a fertilizer ingredient" or "not available in the manufacture of leather articles." Defendants show that some kinds of scrap leather are preferable for fertilizer, others for leatherboard. But it appears that all the kinds mentioned can be and are used for either purpose. At the time of the hearing the western classification differentiated the two classes on a value basis making class C applicable to leather scrap of an actual value of 3.5 cents per pound or less and fifth class on scrap of greater value. It appears that as a practical matter the value of 3.5 cents per pound fairly represents the dividing line between the low-grade scrap ordinarily used in the manufacture of fertilizer and leatherboard and the higher-grade scrap used in the manufacture of leather articles.

The term "leatherboard" is generally applied to a hard, tough, fiber board made in imitation of leather. Its value ranges from about $40 to $100 per ton. Many so-called leatherboards are manufactured from cotton, hemp, jute, or flax and contain no leather. They are used in the manufacture of various articles including trunks, suit cases, and lunch boxes. The content of leather, where any is used, varies from 20 to 90 per cent. There is no competition between leatherboard which contains leather and the so-called leatherboard which does not. Complainants contend that leatherboard is merely a trade name, and that the product, even though it contains leather, is analogous to paper board, pulpboard, and the various fiber boards, and should be similarly rated. They show that pulpboard, paper bags, blank wall paper, news print paper, and

other finished paper articles are rated sixth class, and that builders' board, box board, strawboard, and wood-pulp board are rated 83.33 per cent of sixth class in exceptions to the official classification.

For the defendants it is stated that although the process of manufacture of leatherboard and various paper fiber boards and pulpboards is similar, leatherboard is used for an entirely different purpose, does not compete with the other boards referred to, is not handled or sold by the same dealers, and does not move in nearly such large volume. It is argued on their behalf that leatherboard containing leather is a substitute for leather and might properly be rated the same as the article it displaces. Pressboard and friction board, which are manufactured by a process similar to that used in the manufacture of fiber board, pulpboard, and leatherboard, are rated higher than leatherboard in the official classification.

Leatherboard scrap is shipped from shoe factories mixed with scrap leather. Complainants request the same rating on this commodity as on scrap leather in order to prevent the assessing of the higher rating on mixed carload shipments. Defendants' representatives conceded at the hearing that there could be no justification for a rating on leatherboard scrap higher than on scrap leather.

We find that the ratings on leatherboard are not shown to have been or to be unreasonable, but that the rating on scrap leather and scrap leatherboard, in straight or mixed carloads, of a declared or agreed value not exceeding 3.5 cents per pound, is, and for the future will be, unreasonable to the extent that it exceeds or may exceed sixth class, minimum 30,000 pounds.

These defendants have not until now been authorized to establish or maintain rates on these commodities dependent upon the declared value. There is now no way of showing whether if rates so dependent upon declared or agreed value had been in effect shipments of value exceeding 3.5 cents per 100 pounds would have been forwarded at the higher rates or at the lower rates with the shipper in the latter case assuming the risk from loss or damage in excess of the declared or agreed value. The new rating is coupled with a minimum weight higher than that used in connection with the rating condemned and therefore no definite or sound basis for an award of reparation is presented. *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 39 I. C. C., 88.

The complaint in No. 10140 will be dismissed.

Appropriate orders will be entered.

No. 9463.[1]

H. J. FITZ, DOING BUSINESS AS THE LASSEN COUNTY TRADING COMPANY,

v.

NEVADA-CALIFORNIA-OREGON RAILWAY ET AL.

Submitted July 23, 1919. Decided November 20, 1919.

Complainant assailed as unreasonable and unjustly discriminatory the interstate scale of joint through class rates from San Francisco, Oakland, Sacramento, and other points in California, via Reno, Nev., to Madeline, Cal. Subsequent to the filing of the complaint herein the initial line sold that portion of its line from Hackstaff, Cal., to Reno., to the Western Pacific Railroad, which abandoned it and is constructing a new line. Thereafter the joint interstate class rates, not applicable via any other interstate route between the points of origin and destination, were canceled. As the rate situation attacked no longer exists and as the Commission could make no order for the future, the complaint is dismissed.

James Glynn for complainants.

Fred H. Wood, *C. W. Durbrow*, and *George D. Squires* for Southern Pacific Company.

Seth Mann for San Francisco Chamber of Commerce, intervener.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, and AITCHISON.

The complainant in the original complaint herein is engaged in the sale of general merchandise at Madeline, Cal., located on the line of the Nevada-California-Oregon Railway. Distribution is to territory intermediate to that point and Bartle, Cal. By his complaint, filed January 25, 1917, it is alleged that that carrier and the Southern Pacific Company form an interstate through route for the transportation of passengers and property between San Francisco, Oakland, Sacramento, and other points in the state of California, and Madeline, via Reno, Nev. It was also alleged that via the through route so formed joint interstate class rates applied, which scale of rates was alleged to be unreasonable and unjustly discriminatory, following a reduction of the class rates from San Francisco, Oakland, San Jose, Stockton, Sacramento, and other points in California, to Bartle, a point on the line of the McCloud River Railroad, pursuant to a decision of the Railroad Commission of California in *San Francisco*

[1] This report also embraces Docket No. 9463 (Sub-No. 1), Nevada-California-Oregon Railway *v.* Southern Pacific Company et al.

Chamber of Commerce v. *Southern Pacific Company and McCloud River Railroad Company*, decided November 4, 1916. In No. 9463 (Sub. No. 1), the Nevada-California-Oregon Railway, a common carrier then engaged in interstate transportation from Reno to Lakeview, Oreg., complains against the Southern Pacific Company and the McCloud River Railroad Company, alleging that the reduction in the class rates from San Francisco and other points in California subjected it to unjust discrimination and that it was financially unable to withstand a reduction in its rates and revenues to Madeline as a result of the reduction of class rates from San Francisco to Bartle.

Subsequent to the filing of the complaints the Western Pacific Railroad Company, not a party herein, purchased the line of the Nevada-California-Oregon Railway from Hackstaff, Cal., south to Reno, abandoned that narrow-gauge line and is building an entirely new line between those points. In a supplement to the tariff containing the class rates from San Francisco, via Reno, to Madeline, filed to become effective April 27, 1918, all rates in the tariff from and to points on the Southern Pacific Company and its connections via Reno to and from points on the Nevada-California-Oregon Railway, including Madeline, were canceled on account of the abandonment of that portion of its line by the Nevada-California-Oregon Railway. No rates are in effect via this route.

The Southern Pacific Company has a branch which extends from Fernley, Nev., on its main line to Susanville, Cal., and intersects the line of the Nevada-California-Oregon Railway at Wendel, Cal. A movement from San Francisco to Madeline, via Fernley, would be interstate, but the joint class rates assailed herein are not and have not been effective via this route. It follows from the above that as the rates attacked have been canceled and the route over which they applied has been abandoned, that the rate situation attacked no longer exists, and the Commission could make no order for the future on the issue as drawn here.

AITCHISON, *Chairman.*

The foregoing report, which we adopt as our own, was prepared by the examiner who heard the evidence and was served upon the parties. No exceptions thereto were filed.

The facts are correctly stated. It follows that the complaint should be dismissed, and it will be so ordered.

No. 10480.

KEET & ROUNDTREE DRY GOODS COMPANY ET AL.

v.

DIRECTOR GENERAL, BALTIMORE STEAM PACKET COMPANY, ET AL.

Submitted August 9, 1919. Decided October 30, 1919.

Rates for the transportation of less-than-carload shipments of cotton piece goods from Boston, Mass., and other eastern seaboard points, to Springfield, Mo., over water-and-rail and rail-water-and-rail routes through Memphis, Tenn., found to have been unreasonable to the extent they exceeded the contemporaneous combinations of intermediate rates to and beyond Memphis. Reparation awarded.

S. C. Bates for complainants.
W. C. Smith for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

This is a claim, seasonably filed, for reparation on less-than-carload shipments of cotton piece goods forwarded since January 1, 1917, from Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and other eastern ports or interior eastern cities taking the same rates, over water-and-rail routes or rail-water-and-rail routes, to Springfield, Mo., and arises from the alleged fact that the through rates charged on the shipments exceeded the contemporaneous aggregates of intermediate rates over the same routes.

The shipments moved by rail-and-water routes, and by water routes, to the ports of Philadelphia, Baltimore, Portsmouth, Va., or Savannah, Ga., and over various rail routes thence to Memphis, Tenn., for delivery to the St. Louis-San Francisco Railway Company for completion of the transportation to Springfield. The rates charged ranged from 83 cents to $1.10½ per 100 pounds, and were constructed by adding together rule 25 rates (85 per cent of second class) to Memphis and a commodity rate, on the basis of third class, of 32 cents beyond. The lower rates which it is claimed should have been applied ranged from 87 to 90 cents, and were constructed by the addition to fourth-class rates of from 47 to 50 cents to Memphis of a local commodity rate, on the basis of third class, of 40 cents beyond.

The carriers do not oppose the award of reparation sought, and they have filed tariffs carrying the lower combinations as through rates. The complainants have established by competent evidence their right to any reparation that may be awarded.

The conclusion of the Commission should be that the rates charged were unreasonable to the extent they exceeded the contemporaneous lower combinations of separately established rates to and from Memphis in effect over the same routes, and that the matter of reparation will be given further consideration upon the submission by the parties of a mutually checked statement, in accordance with rule V of the Commission's Rules of Practice, of the amount of reparation due. Upon the facts stated no order for the future seems necessary.

WOOLLEY, *Commissioner:*

The above is the report proposed by the examiner, as modified by us upon consideration of an exception filed by the complainants. We adopt the report as that of the Commission. The lower combinations have been published as through rates in tariffs which became effective October 10, 1919. Upon the submission of a properly prepared and verified statement of the amounts due, we will consider the entry of an order awarding reparation.

No. 9822.

DAHLSTROM METALLIC DOOR COMPANY
v.
ERIE RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 4, 1919. Decided October 30, 1919.

Ratings on certain items under the heading "Building Sheet Metal Work" in the official classification found unreasonable. Reasonable ratings prescribed for the future.

Littlefield, James, Ballard & Frost, John H. Dasher, Francis B. James, E. E. Williamson, Wayne P. Ellis, and *Ewing H. Scott* for complainant.

Frederic L. Ballard for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

Complainant, a corporation engaged in the manufacture of building sheet-metal work at Jamestown, N. Y., alleges, by complaint filed August 13, 1917, as amended, that the ratings, packing requirements, and minima provided in the official classification and applied by the defendants on certain articles under the heading "Building Sheet Metal Work" are unreasonable; and reasonable ratings, rules, and minima are prayed. By supplemental complaint filed since the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had.

The building sheet-metal work in question includes doors, shutters, casings, frames, jambs, moldings, ceiling, siding, sash, panels, ornaments, and partitions, made of copper, brass, bronze, iron, or steel sheet metal stamped or bent to shape. These articles are used in place of woodwork, where a high degree of fire protection and durability is desired. The copper, brass, and bronze articles are shipped unfinished and finished, the difference being that the latter are cleaned and polished. The iron and steel articles are in some instances shipped unfinished, being merely galvanized, plain, or primed, while in other instances they are shipped finished, being bronzed, coppered, enameled, or painted.

Prior to official classification I. C. C. No. 44, these articles were scattered throughout the classification, with various descriptions and ratings. The Committee on Uniform Classification, hereinafter called the uniform committee, undertook the work of consolidating them under the commercial grouping of "Building Sheet Metal Work," with revised descriptions, packing requirements, and minima applicable thereto. Its recommendations were presented to the three territorial classification committees, and have since been generally adopted by the western committee. It is said that they will be adopted by the southern committee. The official committee likewise docketed the uniform recommendations for discussion, and secured the views of complainant and other manufacturers. Thereafter official classification I. C. C. No. 44, effective February 1, 1917, and supplement No. 15 thereto, effective October 1, 1917, were published, containing the uniform recommendations, slightly modified, and the ratings herein complained of, hereinafter referred to as the "present" ratings. Some of the articles in question are necessarily shipped set up, while others may be shipped either set up or knocked down, the method of packing for shipment varying with the form and finish.

The ratings on the copper, brass, or bronze articles concerned cover both finished and unfinished articles. They also apply on articles of metal or wood covered with copper, brass, or bronze; and the ratings on the iron and steel articles also apply on wood covered with iron, steel, or tin. Complainant does not manufacture articles of wood covered with metal. The ratings on the copper, brass, or bronze articles are various; door or window frames, set up, are rated first class in less than carloads and third class in carloads, minimum 18,000 pounds, subject to rule 27. The other articles under this caption are rated generally rule 26 in carloads, some taking a minimum of 30,000 pounds and others 24,000 pounds, subject to rule 27. In less than carloads their ratings are second class. The carload rating provided for the iron or steel articles, when finished, bronzed, coppered, enameled, or painted, is either fourth class, minimum 30,000 pounds, or rule 26, minimum 18,000 pounds, subject to rule 27. In less than carloads these articles are rated second or third class. When shipped unfinished, galvanized, plain, or primed, these articles are generally rated fifth class in carloads, minimum 24,000 pounds, subject to rule 27, or third class, minimum 18,000 pounds, subject to rule 27. In less than carloads the ratings provided for these articles vary from first to third class.

Complainant contends that the carload rating on the copper, brass, or bronze articles, finished or unfinished, should not exceed fourth class, and on iron or steel articles, whether galvanized, plain, or primed, or bronzed, coppered, enameled, or painted, fifth class. The

only less-than-carload rating on the copper, brass, or bronze articles assailed is second class on moldings. The less-than-carload rating asked on the iron or steel articles, bronzed, coppered, enameled, or painted, is third class, and on the iron or steel articles, not bronzed, coppered, enameled, or painted, in each instance one class lower than the rating now applicable. Various changes relating to descriptions, minimum weights, packing requirements, etc., of the iron or steel articles are also asked.

COPPER, BRASS, OR BRONZE.

The former ratings on the copper, brass, or bronze articles, also the present ratings, which are named in items 8 to 15 on page 96 of the classification in question, were and are as follows:

Former ratings.			Present ratings.		
	L. C. L.	C. L.		L. C. L.	C. L.
Frames:			Building Sheet Metal Work:		
Door (or Casings):			Copper, brass or bronze, or metal or wood covered with copper, brass or bronze:		
Metal, N. O. S., crated or boxed (C. L., min. wt. 18,000 lbs.) (subject to Rule 27).	1	3	Casings, Door or Window:		
Window (or Casings):			In boxes or crates	2	
Metal, N. O. S., crated or boxed (C. L. min. wt. 18,000 lbs.) (subject to Rule 27).	1	3	In packages named, C. L. min. wt. 24,000 lbs. (Subject to Rule 27).	.....	R26
			Frames, Door or Window:		
			S. U., in boxes or crates	1	
			S. U., loose or in packages, C. L., min. wt. 18,000 lbs. (subject to Rule 27).	.....	3
			K. D., in boxes or crates	2	
			K.D., in packages named, C. L., min. wt. 30,000 lbs.	.....	R26
Doors, N. O. S.:			Doors:		
Metal, N. O. S., crated or boxed.	2	[1] R26	In boxes or crates	2	
			In packages named, C. L., min. wt. 30,000 lbs.	.....	R26
Jambs, Door or Window:			Jambs:		
Metal, N. O. S., K. D., in bundles, crates or boxes.	2	[1] R26	In bundles	2	
			In boxes or crates	2	
			In packages named, C. L. min. wt. 30,000 lbs.	.....	R26
Moldings, metal or wood covered with copper, brass or bronze, not specifically provided.	(2)	(2)	Moldings:		
			In boxes or crates	2	
			In packages named, C. L., min. wt. 30,000 lbs.	.....	R26
Partitions:			Partitions:		
Office, Saloon or Store N.O.S.			In boxes or crates	2	
Metal, N. O. S., crated or boxed.	2	[1] R26	In packages named, C. L. min. wt. 30,000 lbs.	.....	R26
Sash:			Sash:		
Metal, N. O. S. (C. L. min. wt. 18,000 lbs.) (subject to Rule 27).	1	3	In boxes or crates	2	
			In packages named, C. L. min. wt. 24,000 lbs. (subject to Rule 27).	.....	R26
Building Sheet Metal Work, copper, brass or bronze, or metal or wood covered with copper, brass or bronze, not otherwise indexed by name.	No specified ratings.		Building Sheet Metal Work, copper, brass or bronze or metal or wood covered with copper brass or bronze, not otherwise indexed by name:		
			In boxes or crates	2	
			In packages named, C. L. min. wt. 30,000 lbs.	.....	R26

[1] Minimum weight 30,000 pounds.

[2] Under the analogous-article rule the applicable ratings were:

	L. C. L.	C. L.
Finished in barrels or boxes	3	..
Unfinished in bundles or crates	3	..
Unfinished in barrels or boxes	3	..
Unfinished in packages named, straight or mixed C. L., min. wt. 30,000 lbs	..	4

The present ratings, with the exception of those applicable on moldings, and those shown in the last item which were first established in the present classification, are the same as or lower than those formerly in effect, while the minimum carload weights are in some instances higher than formerly.

Complainant's contention that the carload rating on the copper, brass, or bronze articles should be reduced to fourth class is based on the theory that the uniform spread between these articles in carloads and the rating on iron or steel building sheet-metal work, in carloads, should not exceed one class. The latter articles the complainant insists should be rated fifth class; and when galvanized, plain, or primed they generally are so rated. It insists that the only difference from a classification standpoint between the copper, brass, or bronze articles and iron or steel articles is one of value, and that the greater value of the former articles does not warrant a rating higher by more than one class than that on the iron or steel articles. Complainant observes that the carload rating on various other articles claimed by it to be similar, principally copper, brass, or bronze elevator-inclosure doors, gates, latticework, and railings, is fourth class, while these articles when made of iron or steel are rated fifth class. It is insisted that the transportation conditions surrounding the shipment of the articles offered in comparison are the same as those surrounding the transportation of copper, brass, or bronze building sheet-metal work. Various comparisons of ratings were also offered by the defendants.

In resisting complainant's contention that the carload rating on these articles should be reduced to fourth class defendants show that the raw material from which complainant's articles are manufactured, viz, sheet copper, brass, or bronze, is rated fourth class. They observe that it is a well-established classification principle to apply a higher rating on articles in a more advanced state of manufacture. In this connection defendants show that door or window frame stock lumber is rated sixth class in carloads, while the same material when further manufactured and shipped in the white is rated fifth class; also that iron or steel articles in the casting, forging, or stamping stages in carloads are rated fifth class, but that as soon as they pass those stages are rated fourth class. Defendants also aver that the raw material, copper, brass, and bronze, used by complainant in making building sheet-metal work, when shipped flat, has a weight density of 200 or 300 pounds per cubic foot, and as received by complainant in coils or rolls has a weight per cubic foot of 50 pounds, while the average weight per cubic foot of the copper, brass, or bronze articles manufactured by complainant is 24 pounds, or less than half the weight density of the raw material.

It is also observed that the value of sheet copper, brass, or bronze is 16 cents per pound, while the value of complainant's articles manufactured from this material exceeds 32 cents per pound, or over twice the value of the sheet or raw material.

In answer to complainant's comparison with the fourth-class rating on copper, brass, or bronze elevator-enclosure doors and other copper, brass, or bronze articles defendants observe that these articles are not generally made from sheet metal, but are rolled from solid bars or heavy tubing and generally present a much greater weight density than the articles manufactured by complainant. The general prinicple that manufactured products should take a higher rating than the raw material from which they are made is conceded by complainant, but it insists that this principle has no application to the present case, where in the process of manufacture merely the form of the basic article, sheet metal, is changed. Complainant argues that the basis for building sheet-metal work is sheet metal, and that the articles made by it differ from the material from which they are made merely in form.

As above shown, with the exception of door or window frames, set up, which are rated third class, minimum 18,000 pounds, subject to rule 27, the carload rating complained of is rule 26. The minimum provided for this rating is 30,000 pounds, with the exception of two cases, in which the minimum is 24,000 pounds, subject to rule 27. The minimum weights are not complained of. It is observed that door or window frames will readily load to 24,000 pounds, and defendants expressed a willingness to establish rule 26 on these articles, provided the minimum be advanced to 24,000 pounds, subject to rule 27.

As above stated, the only less-than-carload rating on the copper, brass, or bronze articles which is assailed is the second-class rating on moldings. The former third-class rating is asked in lieu thereof. Complainant observes that the latter rating was and is accorded other copper, brass, and bronze articles, including finished moldings other than those made from sheet metal, pipe fittings, bars, etc. Defendants insist that the present rating is not unreasonable. They show that it is only one class higher than the less-than-carload rating on the raw material from which these moldings are made; also that in practically all instances the articles offered in comparison have a higher weight density than sheet-metal moldings, and contend that the latter articles are more fairly comparable with jambs, frames, k. d., and casings, which have the same value and which, as above shown, are rated second class in less than carloads.

Sheet metal is the ground work or base of building sheet-metal work. In that sense it is the raw material and the latter the product.

With this in mind, as well as the difference in value and cubic weights, we are of the opinion that sheet-metal work may properly be accorded a higher rating than the sheet metal. It is not contended that the rating on sheet metal is improper.

We find that the present rating on copper, brass, or bronze door or window frames, set up, in carloads, is unreasonable to the extent that it exceeds rule 26, minimum 24,000 pounds, subject to rule 27. We further find that the other ratings on copper, brass, or bronze articles complained of are not shown to be unreasonable.

IRON AND STEEL WORK.

The ratings on the iron and steel articles in question are named in items Nos. 17, 18, 20, 21, 23, and 24, page 96, and items Nos. 7, 8, 10, 12, 13, and 14, page 97, of the classification in question, and in item No. 4, page 22, of supplement No. 15 thereto. These items are shown under the heading "Building Sheet Metal Work; Iron or Steel, or wood covered with iron or steel or tin." Complainant asks for a carload rating of fifth class on all of the iron or steel articles in question, whether shipped coppered, bronzed, enameled, or painted, or galvanized, or plain or primed. On less-than-carload shipments of these articles the rating asked varies from second to fourth class. With the exception of those named in item 24, page 96, and items 12 and 14, page 97, the ratings sought are the same as those formerly applicable.

In the case of finished iron and steel articles which are bronzed, coppered, enameled, or painted, defendants insist that the fifth-class carload rating can not properly be applied, and that fourth class is the proper rating for such articles, with a minimum of 24,000 pounds or higher. In support of this they show that the rating sought is the same as that on the iron or steel material from which these articles are made. They also observe that there are but few instances in the official classification where the fifth-class rating is accorded with a minimum less than 24,000 pounds. They urge that these few instances are exceptions to the general rule, brought about by some special condition, such as low value, and that they are being eliminated from time to time. The character and quality of the finish on the iron or steel articles manufactured by complainant are wholly similar to those found in the interior of steel Pullman cars, and are described in complainant's catalogue, offered in evidence, as follows:

> The elegant finish for which the Dahlstrom Products are noted is the result of the most careful selection of the ingredients used in the enamel, the chemical properties of which have been carefully tested for final and lasting results. These facts, together with expert workmanship and careful baking of each coat,

insure a durable, elastic finish that is artistic, sanitary and satisfactory in every way. We reproduce, perfectly, natural wood or metallic finishes in any color.

The finishing process adds value to the article, and defendants observe that upon every correct principle of classification the finished articles, bronzed, coppered, enameled, or painted, should take a higher rating than the articles in their unfinished state. The record does not show the exact increased values in all instances, but in the case of moldings they would appear to be more than 100 per cent. The testimony shows that the finished articles can not be nested, but must in all instances be packed so as to protect the finish, and that when so packed the weight density is considerably less than when shipped loose, in some instances being one-half. In support of their contention that the finished articles should be accorded a higher rating than the unfinished the defendants refer to our decisions upholding this principle in various cases, including *Capital Electric Co.* v. *B. & O. C. T. R. R. Co.*, 26 I. C. C., 472, in which we found that the rate on enameled iron conduit pipe should be higher than that on plain wrought-iron pipe. Complainant insists that, aside from the difference in the outside finish, there is no difference between the quality, value, or construction of the bronzed, coppered, enameled, or painted articles and those that are galvanized, plain, or primed. It compares the ratings complained of with the ratings on other metal articles accorded the rating sought, which, it claims, are similar from a classification standpoint to those here in question. Complainant refers to *Prest-O-Lite Co.* v. *B. & A. R. R. Co.*, 36 I. C. C., 545, where we found that the rating on coppered or nickeled acetylene gas cylinders should not exceed the rating on these cylinders when painted. As above shown, the iron or steel articles in question, either coppered or painted, are accorded the same rating.

In some instances the only changes asked with respect to the less-than-carload ratings on the iron and steel articles relate to packing requirements, while in other instances reductions are asked. It is complainant's position that as a general principle there should be a uniform spread of two classes between the less-than-carload and carload ratings on these articles, with certain exceptions, depending upon the manner of shipment, whether set up or knocked down, and a proper grouping according to weight densities; that as to less-than-carload shipments there should be three such groups, one embracing articles weighing 15 pounds or less per cubic foot, one embracing articles weighing between 15 and 30 pounds per cubic foot, and one embracing articles weighing in excess of 30 pounds per cubic foot. It is contended that reasonable ratings to apply on less-than-carload shipments of articles of the above densities would

be second, third, and fourth classes, respectively. It is observed that as to the articles on which complainant asks for a spread of three classes as between the carload and less-than-carload ratings, the articles in less than carloads in each instance are set up; that the articles upon which complainant asks for a less-than-carload rating of fourth class, or a spread of one class between the carload and less-than-carload ratings, weigh over 30 pounds per cubic foot. The various items will be considered separately.

CASINGS.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C. L.
96	17	Casings, Door or Window:			Casings, Door or Window:		
		In boxes or crates.....	2		S. U., in boxes or crates	2	
		In packages named, C. L., min. wt. 24,000 lbs. (subject to Rule 27).	.....	5	S. U., in packages named, C. L., min. wt. 24,000 lbs. (subject to Rule 27).	.....	5
					K. D., in boxes or crates.	3	
					K. D., in packages named, C. L., min. wt. 30,000 lbs.	.....	5

There is no distinction in the rating in the present item as between shipments set up or knocked down. Shipments knocked down have a greater weight density than when set up. Defendants offered no evidence to justify the changes in packing requirements, and express willingness to establish the ratings sought and formerly in effect. We find that the ratings are unreasonable to the extent that they exceed the former ratings.

DOORS.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C. L
96	18	Doors:			Doors:		
	20	Other than Rolling:			Other than Rolling:		
	21	Bronzed, coppered, enameled or painted:			Bronzed, coppered, enameled or painted:		
		In boxes or crates.....	2		In boxes or crates.....	3	
		In packages named, C. L. min. wt. 30,000 lbs.....	.....	4	In packages named, C. L. min. wt. 30,000 lbs.....	.....	5

The ratings sought were those formerly applicable to doors, other than rolling, whether bronzed, coppered, enameled, painted, or galvanized, plain or primed. These ratings on doors, other than rolling, galvanized, plain, or primed, when shipped loose, are still in effect. As before stated, defendants seek to justify the higher ratings on these doors when bronzed, coppered, enameled, or painted on the

ground that they are of greater value than when galvanized, plain, or primed, and on the further ground that the weight density of shipments bronzed, coppered, enameled, or painted, due to the fact that they are necessarily shipped packed, is less than the weight density of those galvanized, plain, or primed, which, as above shown, are shipped loose. With respect to the less-than-carload rating defendants express a willingness to establish rule 25, or one step above the present rating on these doors unfinished and one step lower than on those made of copper, brass, or bronze.

Complainant observes that asbestos doors, not glazed, also various iron and steel articles, whether galvanized, plain, primed, coppered, bronzed, or enameled, including stamped, pressed, forged, or cast iron or steel railway-car parts or fittings, in carloads, are rated fifth class, and in less than carloads, third class. As above stated, the ratings sought are those applicable to the raw material from which the articles are made.

We find that the ratings should not exceed rule 25, less than carloads, and fourth class, carloads.

DOOR AND WINDOW FRAMES.

Page.	Item.	Present rating.			Rating sought.		
			L. C. L.	C. L.		L. C. L.	C. L.
96	23	Frames, Door or Window: S. U., in boxes or crates.	2		Frames, Door or Window: S. U., loose or in boxes or crates	2	
		S. U., loose or in packages, C. L., min. wt. 18,000 lbs. (subject to Rule 27)		R26	S. U., loose or in boxes or crates, C. L. min. wt. 18,000 lbs. (subject to Rule 27)		5

These articles, set up, loose or in packages, were formerly rated second class in less than carloads and fifth class in carloads, minimum 24,000 pounds, subject to rule 27. Defendants insist that the absence of provision for a less-than-carload rating on door or window frames, loose, is in accordance with the recommendations of the uniform committee. They observe that the packing requirements as to less-than-carload shipments tend to reduce the risk of damage in transit to the article itself, as well as to other articles in the car, with a more economical use of space, and that the abolition of the requirements would be a backward step in the development of the classification. In answer, complainant points out that wooden door and window frames, also iron or steel skylight frames and steel sash, also various other iron and steel articles, are accorded the same less-than-carload rating whether loose or in packages. It insists that there is no greater risk of damage with respect to iron or steel door frames than to these articles. With respect to the carload rating

on door or window frames, set up, defendants express willingness to establish the fifth-class rating, based on a minimum of 24,000 pounds, subject to rule 27. As above shown, with a few exceptions which are being eliminated from time to time, the fifth-class rating is coupled with a minimum of 24,000 pounds or higher. While complainant does not generally load to a minimum of 24,000 pounds, such loading is possible in a standard car.

We find that the requirement that less-than-carload shipments of the articles named in this item shall be shipped in boxes or crates is reasonable; but that the present rating on these articles in carloads is unreasonable to the extent that it exceeds the fifth-class rating, minimum 24,000 pounds, subject to rule 27.

WINDOW FRAMES AND SASH COMBINED.

Page.	Item.	Present rating.			Rating sought.		
			L. C. L.	C. L.		L. C. L.	C. L.
96	24	Frames, Window, and Sash combined:			Frames, Window and Sash combined:		
		In boxes or crates.....	1		Loose, or in boxes or crates.	2	
		In packages named, C. L., min. wt. 18,000 lbs. (subject to Rule 27).	.....	3	Loose, or in boxes or crates, C. L., min. wt. 24,000 lbs. (subject to Rule 27).	.....	5

Prior to the establishment of this item a rating on frames, window and sash combined, was not specifically provided for. As hereinbefore shown, door or window frames, when shipped separately, set up, loose or in packages, were formerly rated second class in less than carloads, and fifth class in carloads, minimum 24,000 pounds, subject to rule 27. Sash, steel bar, unglazed, loose, or in packages, was formerly rated second class in less than carloads, and fifth class in carloads, minimum 24,000 pounds, subject to rule 27.

Complainant's reasons for asking for the application of the rating sought on these articles when shipped loose, and defendants' objections thereto, are generally the same as those set forth with respect to iron or steel door or window frames, the transportation conditions surrounding which are similar. Defendants express willingness to establish the fifth-class rating on these articles in carloads, based on a minimum of 24,000 pounds, subject to rule 27.

We find that the requirement that frames, window and sash combined, be shipped in boxes or crates is not unreasonable, but that a reasonable less-than-carload rating on these articles in boxes or crates would not exceed second class, and that a reasonable carload rating on these articles in the packages named would not exceed fifth class, minimum 24,000 pounds, subject to rule 27.

MOLDINGS.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C. L.
97	1	Moldings, not otherwise indexed by name:			Moldings, not otherwise indexed by name:		
	2	Bronzed, coppered, enameled or painted—			Bronzed, coppered, enameled or painted—		
		In boxes or crates...	3		In boxes or crates...	3	
		In packages named, C. L., min. wt. 30,000 lbs.	.....	4	In packages named, C. L., min. wt. 30,000 lbs.	.....	5
	3	Galvanized, plain or primed—			Galvanized, plain or primed—		
		In boxes, bundles, or crates.	3	.....	In boxes, bundles or crates.	4	
		Loose or in packages, C. L., min wt. 36,000 lbs.	.....	5	Loose or in packages, C. L., min. wt. 36,000 lbs.	.....	5

The ratings previously applicable to these articles were as follows:

Iron and Steel, etc.:
Moldings, N. O. S.

Wall, Door Frame or Window Frame:	L. C. L.	C. L.
In bundles, crates or boxes	3	—
Carloads	--	5

Defendants resist a reduction in the carload rating from fourth to fifth class on these moldings, bronzed, coppered, enameled, or painted, for the reasons heretofore stated. They also resist complainant's contention that these moldings, when galvanized, plain, or primed, in less than carloads, should be rated fourth class, but express willingness to establish rule 26, or one step above the less-than-carload rating of fourth class applicable to sheet steel, the raw material from which these articles are made. It is observed that rule 26 is the less-than-carload rating provided for iron or steel moldings for electric wiring, which have a cubic-foot weight of from 77 to 85 pounds, as against the cubic-foot weight of complainant's moldings, 60 pounds. Complainant compares the ratings sought with the ratings on various other articles which it insists are analogous, and which are accorded these ratings.

We find that the fourth-class rating on bronzed, coppered, enameled, or painted moldings in carloads is not unreasonable, but that the less-than-carload rating of third class on moldings, galvanized, plain, or primed is unreasonable to the extent that it exceeds rule 26.

SASH.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C. L.
97	7	Sash:			Sash:		
		Not glazed:			Not glazed:		
		In boxes, bundles or crates.	1		In boxes, bundles or crates.	2	
		In packages named, C. L., min. wt. 18,000 lbs. (subject to Rule 27).	.....	3	In packages named, C. L., min. wt. 24,000 lbs. (subject to Rule 27).	.....	

As before stated, the ratings sought were those previously applicable. Defendants offered no evidence in support of the increased ratings and express willingness to reestablish the former ratings. We find that the ratings complained of are unreasonable to the extent that they exceeded those formerly in effect.

SHUTTERS.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C. L.
97	10	Shutters: Other than Rolling: Loose or in packages. Loose or in packages, C. L., min. wt. 36,000 lbs.	3	 5	Shutters: Other than Rolling: Loose or in packages. Loose or in packages, C. L., min. wt. 30,000 lbs	3	 5

As indicated, the only change asked in this item is a reduction in the minimum carload weight from 36,000 to 30,000 pounds. Complainant testified that these shutters will not load in excess of 30,000 pounds. It observes that iron or steel partitions and doors, which are said to be similar in weight density, are accorded a minimum of 30,000 pounds. Defendants state that the present minimum was established on the recommendation of the uniform committee, but upon complainant's showing that these articles will not load in excess of 30,000 pounds express willingness to establish that minimum. We find that the minimum complained of is unreasonable to that extent.

CEILING, ETC.

Supplement No. 15.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C. L.
22	4	Building Sheet Metal Work: Ceiling or Siding, or Siding Moldings, Panels or Ornaments: Other than enameled: Nested, in bundles. Nested, in boxes or crates. Loose or in packages, C. L. min. wt. 36,000 lbs.	 R26 R26	 5	Building Sheet Metal Work: Ceiling or Siding, or Siding Moldings, Panels or Ornaments: Other than enameled: Nested, in bundles. Nested, in boxes or crates. Loose or in packages, C. L. min. wt. 36,000 lbs.	 4 4	 5

Defendants seek to justify the rating herein complained of, increased from fourth class, on the ground that it is but one step higher than the fourth-class less-than-carload rating on the raw material, sheet metal, from which these articles are made. Again it is pointed out that rule 26 was the less-than-carload rating on various other analogous articles, including iron and steel moldings

for electric wiring hereinbefore referred to, the latter weighing from 77 to 80 pounds per cubic foot as against 60 pounds in the case of the above articles.

Complainant, on the other hand, cites ratings of third to fourth class on various metallic articles, such as tubing; also the third-class rating on wooden moldings in less than carloads. It is testified that, while the value of the latter moldings is approximately the same as that of unfinished iron or steel ceiling moldings, the value per cubic foot and weight density is considerably less.

The various comparisons considered, we find that the rating complained of is not unreasonable.

MISCELLANEOUS.

Page.	Item.	Present rating.	L. C. L.	C. L.	Rating sought.	L. C. L.	C.
97	13	Building Sheet Metal Work, iron or steel, or wood covered with iron or steel or tin, not otherwise indexed by name:			Building Sheet Metal Work, Iron or Steel, or wood covered with iron or steel or tin, not otherwise indexed by name:		
	14	Bronzed, coppered, enameled or painted:			Bronzed, coppered, enameled or painted:		
		In boxes or crates.	3		In boxes or crates.	3	
		In packages named, C. L., min. wt. 30,000 lbs.	.....	4	In packages named. C. L., min. wt. 30,000 lbs.	.....	

No item corresponding to the one here in question was previously published. The rating complained of is the same as that applicable on the bronzed, coppered, enameled, or painted articles named in item 21, page 96, and item 2, page 97, *supra*, of the official classification. Complainant's reason for urging the establishment of the lower rating and defendants' reasons for resisting its establishment have already been discussed and need not be restated. We find that the rating complained of is not unreasonable.

MIXED CARLOADS.

The established charges to apply on mixed carloads of the articles shipped by complainant were and are those provided for under rule 10 of the official classification. Complainant contends that reasonable charges on mixed carloads of iron or steel building sheet-metal work should be based on the fifth-class rate, minimum 30,000 pounds, and on mixed carloads of copper, brass, bronze, iron, or steel, or iron or steel, bronzed, coppered, enameled, or painted, should be based on the fourth-class rate, minimum 30,000 pounds. This contention is apparently predicated to a great extent on the theory that the reduced ratings sought, particularly the fourth-class carload rating on the copper, brass, or bronze articles, would

be established. As above shown, the minimum of 36,000 pounds is provided for in connection with some of the articles in question. At the hearing complainant suggested that such articles as are provided with a minimum of over 30,000 pounds be excluded from the mixed carload provision proposed. Complainant argues that articles of building sheet-metal work are related articles of the same general character, and that it is generally necessary to ship these articles in mixed carloads.

Defendants insist that, while there are a few exceptions to rule 10, a departure from the provisions of this rule in connection with the articles shipped by complainant would be unwarranted. They urge that a compliance with complainant's request would have the effect of nullifying the result of the careful individual descriptions and ratings now provided for. They insist that the provisions of rule 10, which apply generally to commodities covered by the official classification, are fair and reasonable, and show that this rule has been approved by the Commission in various cases.

We find that the rule of the official classification as applicable to, and the resulting charges on, mixed carloads of building sheet-metal work are not shown to be unreasonable.

An appropriate order will be entered.

WOOLLEY, *Commissioner*, concurring:

I concur in the findings in the report because they are the only ones justified by the record before us. My conviction as to the necessity for a uniform classification is indicated in my dissent in part to the report in the *Consolidated Classification Case*, 54 I. C. C., 1, 637, and should we be called upon to pass upon the reasonableness of uniform ratings, upon a record embracing the entire country, my vote, very obviously, would be based upon somewhat different and broader considerations.

No. 10524.

HEID BROTHERS

v.

EL PASO & NORTHEASTERN RAILROAD COMPANY AND THE DIRECTOR GENERAL OF RAILROADS.

Submitted September 4, 1919. Decided November 24, 1919.

In September, 1918, the El Paso & Northeastern Railroad Company and the Director General of Railroads instituted proceedings in the district court of the thirty-fourth judicial district of Texas against Heid Brothers for the collection of certain demurrage charges alleged to have accrued at El Paso, Tex., between October 4, 1916, and August 23, 1917. Thereafter the complainants, defendants there, filed this complaint in which they allege that the charges assessed were unreasonable and unduly prejudical, and for reasons set forth in the complaint are not in fact due and payable. The court proceedings have been removed to the United States district court for the western district of Texas, where they are still pending. Under the circumstances, *Held:*

1. That upon a complaint, the purpose of which is to secure a ruling from this Commission upon the reasonableness and propriety of demurrage rules and charges, lawfully established by tariffs duly filed, and to obtain relief from the payment of such charges, legal proceedings therefor having been instituted, the Commission may inquire into the reasonableness of the rules under which the charges were assessed, and having determined that issue will leave questions of fact to be determined by the court.
2. That the demurrage schedules in effect at El Paso during the period above stated were not unreasonable or otherwise unlawful. Complaint dismissed.

Rufus B. Daniel, *Joseph U. Sweeney*, and *R. B. Rawlins* for complainants.

W. M. Peticolas and *Del. W. Harrington* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

The following is in substance the report proposed by the examiner and served upon the parties:

Heid Brothers, the complainants herein, are dealers in grain, coal, wood, and hay at El Paso, Tex. Their warehouse is connected with the rails of the El Paso & Southwestern Railroad by private spur track accommodating five cars and with the rails of the Texas & Pa-

cific Railroad by a similar spur having a capacity of seven cars. Between October 4, 1916, and August 23, 1917, out of numerous carload shipments of the commodities mentioned received by complainants, some 55 reached El Paso over the rails of defendant El Paso & Northeastern Railroad Company, hereinafter termed defendant, a part of the El Paso & Southwestern system. Complainants' disposition orders were that these 55 cars be placed on their private siding on the El Paso & Southwestern, but the cars were held in defendant's yards under demurrage in accordance with a tariff rule authorizing constructive placement when the condition of private tracks prevents actual delivery thereon. Demurrage charges aggregating approximately $4,000 were assessed by defendant on the 55 cars so held. Payment was declined on the ground that no charges should have been assessed on cars not actually placed in compliance with the directions given.

In September, 1918, defendant and the Director General of Railroads brought suit in the district court of the thirty-fourth judicial district of Texas against complainants and their sureties to recover the amount of demurrage alleged to be due and unpaid. The case was subsequently removed by complainants to the United States district court for the western district of Texas, where it is now pending. Thereafter, on March 24, 1919, they filed the complaint here before us, in which they allege (1) that if any demurrage accrued on the cars in question in excess of $105, an amount which they have tendered, it was because of embargoes placed by the Texas & Pacific Railroad, of which they were not notified; (2) that as the demurrage, if any, accrued wholly in Texas the charges should be computed under the tariffs governing traffic in Texas; (3) that the charges assessed were unreasonable, in violation of section 1 of the act, and unduly prejudicial, in violation of section 3; and (4) that under the conditions that brought about the delay in unloading it would be unreasonable to compel them to pay all or any part thereof.

Complainants stated at the hearing that it was their practice, when the track connecting with the El Paso & Southwestern was fully occupied or delivery was desired on their Texas & Pacific siding, to order delivery to the Texas & Pacific of cars arriving over the El Paso & Northeastern, but that because of Texas & Pacific embargoes it became necessary to take delivery of all the cars here in question on their El Paso & Southwestern siding. It appears from the record that there were no embargoes against the commodities received by complainants on the dates of car arrival or disposition orders such as to necessitate the use of the El Paso & Southwestern as the delivering carrier, and no further consideration need be given to that allegation in the complaint.

The demurrage rules in effect at El Paso in October, 1916, applicable on state and interstate traffic, provided that after 48 hours free time a charge of $1 per day would be assessed against cars held by or for consignors or consignees for loading, unloading, forwarding directions, or for any other purpose. Effective December 15, 1916, the interstate charge was increased to $1 for the first day, $2 for the second day, $3 for the third day, and $5 for the fourth and each succeeding day. On May 1, 1917, the charges on interstate traffic became $2 for the first five days and $5 per day thereafter. Three of the cars upon which defendant assessed demurrage arrived in El Paso in October, 1916, when the charge was $1 per day. The others arrived after the increased charges had been made effective. Apparently two cars originated in Texas and were not subject to the interstate rules.

The complaint attacks the application of the charges. Complainants offered no evidence bearing upon their reasonableness and the only information of record thereon is found in the explanation given by defendant of the circumstances under which the charges were established.

During the latter part of 1916 there was an unusual demand for cars, not only in El Paso but throughout the country generally. The situation at El Paso was particularly affected by the activities of the war department in the protection of points along the Mexican border. In order to promote a more prompt release of equipment the carriers filed new demurrage schedules, to take effect on various days in December, 1916, increasing the charges for detention after expiration of the free-time period to $2 for the first day, $3 for the second day, $4 for the third day, and $5 for the fourth and each succeeding day. These increased charges were protested, and the schedules were suspended by orders of the Commission dated November 15 and 29, 1916, in Investigation and Suspension Docket No. 966. On the latter date the interested carriers were authorized to cancel the suspended schedules and to file in lieu thereof new schedules providing for charges of $1 for the first day, $2 for the second day, $3 for the third day, and $5 for each day thereafter. These were published for defendant, effective December 15, 1916, in supplement No. 18 to A. C. Fonda's I. C. C. No. 18, and remained in force until May 1, 1917, when they were changed under special permission of the Commission to $2 for the first five days and $5 for each succeeding day.

Nothing appears upon this record to indicate that the charges were unreasonable or unduly prejudicial. The fact that tariffs governing intrastate traffic in Texas provided for lower charges is not material.

The entire controversy between Heid Brothers and the carrier in the federal court, and here, aside from the question of the reasonableness of the schedule of demurrage charges, is whether the carrier should properly have charged demurrage on the cars ordered placed on complainants' siding or elsewhere but held in the yards under the rule for constructive placement. That rule reads as follows:

Rule 165. Placing of cars for unloading.

(a) When delivery of cars consigned or ordered to private tracks can not be made on account of inability of consignee to receive, because of said tracks being full of loaded cars or unreleased empties, delivery will be considered to have been made when car was tendered. The agent must give notice in writing of all cars he has been unable to deliver because of the condition of the private tracks or because of other conditions attributable to consignee. This shall be considered constructive placement.

The issue between the parties may be illustrated by the record of car O. S. L. 10167, containing wood from Corona, N. Mex., consigned to Heid Brothers, El Paso, which arrived there January 12, 1917. Notice of arrival was sent to and received by complainants on that date. On the following day, January 13, complainants gave orders to place it on their El Paso & Southwestern siding. That siding was then fully occupied by loaded cars and delivery there could not be made. On the 14th two cars were released, and on the 15th two loaded cars then being held for complainants in the yards were set in their place, again filling the track. On January 16, defendant notified complainants that some 35 cars, including O. S. L. 10167, could not be placed on the spur, and in accordance with the tariffs were to be considered in constructive placement. This notice was received on January 17, but apparently no further orders were given by complainants until January 31, when they ordered the car placed on a public team track. Through defendant's error it was not so placed until March 8. Defendant is seeking to recover the demurrage accrued between the date of expiration of the free time after constructive placement and the date when final disposition orders were given. Complainants' contention apparently is that inasmuch as their original order, said to have been given because of erroneous information as to embargoes on the Texas & Pacific, was not followed, no charge should have been assessed. According to defendant four days demurrage accrued on this car, but the car record in evidence shows it to have been held for orders for a period of 10 days, and the computation is seemingly incorrect. No charges were assessed for the period between January 31 and March 8, the detention having been caused by railroad error.

The complainants do not allege that the constructive placement rule was improper in any respect unless their allegation that the charges assessed were unreasonable and unlawful may be so con-

strued. But even if it be considered that the pleadings put in issue the reasonableness of that rule neither they nor the defendant offered any evidence thereon. At the hearing defendants moved to dismiss on the ground that the complaint alleged merely that they were attempting by a suit to collect certain charges, which, if collected, would be unreasonable, and that the disputed questions of fact as to when placement was made are questions that the federal court, having first taken jurisdiction, should determine.

The purpose of this complaint, as indicated by the pleadings and the evidence, is to secure a ruling upon the lawfulness of the demurrage rules and charges and to obtain relief from the payment of such charges. Collection of the charges is not enforceable through the Commission. The Commission may, however, and should under this complaint, inquire into the reasonableness and propriety of the rules under which the charges have been assessed, but after determining those issues should leave to the court determination of the disputed questions of fact.

The demurrage schedules are not found upon this record to have been unreasonable or otherwise unlawful and the complaint should be dismissed.

HALL, *Commissioner:*

No exceptions were filed to the foregoing proposed report of the examiner. Upon consideration of the record we approve and adopt it as part of this report and find that the demurrage schedules in effect at El Paso during the period covered by the complaint were not unreasonable or otherwise unlawful.

An order will be entered dismissing the complaint.

No. 10636.

A. J. MACINTYRE

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted November 5, 1919. Decided November 19, 1919.

Rates on hay from Minnesota and Wisconsin points to stations in Montana not shown to have been unreasonable. Complaint dismissed.

Stanley B. Houck for complainant.

B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, *Commissioner:*

This case was made the subject of a proposed report by the examiner which was served upon the parties. This report is based upon the facts as stated in the proposed report, with such modifications as from our examination of the record appear necessary.

By complaint filed within the statutory period, as amended, complainant alleges that the rates charged for the transportation of baled hay in carloads from points in Minnesota and Wisconsin to points in Montana, shipped during the early part of May, 1917, were unjust and unreasonable in violation of section 1 of the act to regulate commerce. Reparation is asked. Only one shipment originated on the Chicago, St. Paul, Minneapolis & Omaha Railway and claim for reparation thereon was withdrawn at the hearing.

The shipments moved via the Northern Pacific Railway from Pine City, Rush City, Rock Creek, and Duluth, in Minnesota, to Billings, Red Lodge, Laurel, Columbus, Bridger, Livingston, Butte, and Reed Point, in Montana. Charges were collected at the class E rates ranging from 44 cents to 55 cents per 100 pounds, which were applicable under an exception to the western classification class C basis.

During the period of movement defendant maintained eastbound a commodity rate of 30 cents per 100 pounds on baled hay in carloads between the points named. On May 22, 1917, subsequent to the movement, this rate was made applicable in the reverse direction. Rates in both directions have since been increased to 37.5 cents under General Order No. 28 of the Director General. On account of

drought conditions in Montana the tariffs now provide as an emergency measure that the rates shall be one-half of the tariff rates from points of origin to destination. Complainant does not attack the rates as increased by General Order No. 28, and is satisfied for the future with the continuance of the present rates or the reestablishment of the rate of 37.5 cents. It is pointed out for defendants that by reason of an emergency caused by a shortage of feed a special rate of $6 per ton was originally established, on January 25, 1911, from Red Lodge and Bridger to St. Paul, Minneapolis, and Minnesota Transfer; that it was intended that the rate should continue only during the emergency; that the rate subsequently expired, under appropriate expiration notice, on June 30, 1911; that on October 5, 1911, the rate of 30 cents was again established because of the unusual production of alfalfa in Montana and a shortage of feed in other states. It is explained that this eastbound rate was maintained because of yearly representations of shippers as to the necessity for its continuance.

There has been little movement of hay westbound. In 1917, the Yellowstone County Council of National Defense of Montana represented to the carriers that a low rate on hay was imperative from Minneapolis and Duluth to Big Timber and certain other Montana points for the reason that cattle in Montana were starving. This organization undertook to buy hay and to distribute it to farmers practically at cost. The rate of 30 cents westbound was therefore established to the stations specified and, to avoid discrimination, the same rate was published to other Montana points.

The rates applied on shipments from Duluth to Billings and to Butte, which are fairly representative, were considerably lower than the contemporaneous rates on stock foods and other comparable commodities from and to the same points, with the single exception of the rate on hay from Duluth to Butte, which was the same as that applicable to stock food. Car-mile earnings of approximately 13 cents on shipments of hay from Duluth to Billings and Butte are compared with car-mile earnings ranging from 14.61 cents to 26.62 cents on stock food, oil cake, etc., and with car-mile earnings of 17.16 cents on all traffic over defendants' lines during the year 1917.

The average distance between points of origin and destination is about 975 miles; the average car loading of shipments specified in the complaint was 26,932 pounds, the average of rates paid was 48.6 cents per 100 pounds, the average of the ton-mile earnings was 9.9 mills, and the average car-mile earnings 13.4 cents. The rate of 30 cents would yield average ton-mile earnings of 6.3 mills and average car-mile earnings of 8.6 cents.

We find that the rates assailed are not shown to have been unreasonable. The complaint will be dismissed.

No. 10521.

McCRORY STORES CORPORATION
v.
DIRECTOR GENERAL, PENNSYLVANIA RAILROAD COMPANY, ET AL.

Submitted November 17, 1919. Decided November 19, 1919.

Rating of one and one-half times first class on cut glassware from Pittsburgh, Pa., and points in West Virginia to points in official classification territory not shown to be unreasonable. Complaint dismissed.

R. A. Koontz for complainant.
John M. Sternhagen for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, AITCHISON, AND WOOLLEY.

CLARK, *Commissioner:*

This complaint brings in issue the reasonableness of the official classification rating of one and one-half times first class as applied to shipments of common cut or skin-cut glassware from Pittsburgh, Pa., Sistersville and Fairmont, W. Va., to certain points in official classification territory. Complainant is engaged in the 5 and 10 cent store business and ships large quantities of the cheaper grades of glassware. It alleges that the application of one and one-half times first class to its shipments of common or skin-cut glassware is unreasonable in violation of section 1 of the act to regulate commerce and section 10 of the federal control act, and that a reasonable basis to apply upon its shipments would be rule 25, which is applicable on glassware n. o. s., with the addition of a declared-valuation clause limiting the application of the rule to glassware of value not exceeding $1 per dozen.

The greater number of articles of glassware in which complainant deals have value seldom exceeding $1 per dozen and sell at retail for 10 cents each. The testimony in behalf of complainant refers mainly to tumblers, sherbet glasses, vases, nappies, salt and pepper shakers, and similar table glassware, although evidence concerning certain transportation characteristics of the heavier articles of glassware was adduced. The present rate of one and a half times first class from Pittsburgh to New York, N. Y., which is fairly illustrative, is $1.01½ per 100 pounds. According to evidence introduced in behalf of complainant the common skin-cut glassware handled by it weighs approximately 108 pounds to the barrel, has a value of

$16.75, and a barrel ordinarily contains 22½ dozen articles of glassware. The charges on a barrel of the commodity from Pittsburgh to New York would amount to $1.10 or slightly more than 4½ cents per dozen on a commodity valued at 75 cents a dozen.

Complainant contends that it is not reasonable that shipments of the low-grade glassware in which it deals should be charged on basis of the rating applicable to the finer and more valuable articles of cut glassware. It also points out that glassware which is not cut but which is otherwise similar to the articles which it ships is accorded the rule 25 rating, that is to say 15 per cent below second class but not lower than third class, in less than carloads, and the fourth-class rating in carloads.

The present rating of one and one-half times first class on cut glassware has been continuously in force since 1912. Prior to 1912 a rating of double first class was applicable. It appears that the official classification committee in recognition of the low value of the commodity here in issue and with a view to the equalization of commercial conditions without unduly sacrificing the carriers' revenues has during a period of several years made repeated attempts to narrow the spread between the ratings on the various grades of cut and uncut glassware; but it is admitted by shippers of all grades of glassware that distinctive descriptions have not been found possible. No practical method of differentiating between the low-grade glassware and the more valuable articles of the same general type has been found and none is suggested by complainant other than the application of the valuation test. In framing a classification no one consideration is controlling. Volume of tonnage, risk, liability to damage, cost of carriage, care in handling, controlling conditions caused by competition, and other transportation characteristics must be considered. *Hires Condensed Milk Co.* v. *P. R. R. Co.*, 38 I. C. C., 441. The record is devoid of evidence as to these and other elemental tests. As we said in *Forest City Rate Bureau* v. *Ann Arbor R. R. Co.*, 18 I. C. C., 205, if classification were based on value the number of classes would be too large and the refinement too subtle for practical operation. While there are a few articles upon which the classification ratings are based upon value by reason of the peculiar susceptibility of those articles to the valuation test, and while the interposition of practical difficulties can not be permitted to defeat the requirements of the law as to reasonable rates, a classification rating that has been long continued should not be disturbed unless it is found to cause the exaction of an unreasonable or an unjustly discriminatory or unduly prejudicial charge.

We find that the rating attacked has not been shown to be unreasonable. The complaint will be dismissed.

No. 9692.

RIO GRANDE VALLEY CREAMERY COMPANY

v.

WELLS FARGO & COMPANY ET AL.

Submitted November 17, 1917. Decided November 19, 1919.

Through second-class express rates on cream in cans from points in New Mexico and Texas over interstate routes to El Paso, Tex., exceeded the aggregate of intermediate rates and were unlawful. Reparation awarded. Distance rates voluntarily established by the Director General of Railroads.

Rufus B. Daniel for complainant.

J. Kennedy for American Express Company; *A. M. Hartung*, *T. B. Harrison*, and *Branch P. Kerfoot* for American Express Company and Wells Fargo & Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, *Commissioner:*

The object of this proceeding was to require defendants to establish for the transportation of cream in 5, 8, and 10 gallon cans from points in New Mexico, Oklahoma, and Texas, by interstate routes to El Paso, Tex., where the service was by two companies, the schedule of rates maintained by Wells Fargo & Company, one of the defendants, for equal distances on its lines locally. Reparation is also asked on shipments from New Mexico and Texas which moved subsequent to April 1, 1916, when complainant commenced to operate its creamery at El Paso. Defendants were represented at the hearing by counsel with witnesses, but offered no testimony on the ground that "the complainant had failed to make out a case."

Subsequently to the submission of the case the defendants and other principal express companies were merged into one company called the American Railway Express Company, effective July 1, 1918. On November 16, 1918, the President by proclamation took over possession, control, and operation of the express company. Effective April 1, 1919, the Director General of Railroads established rates to El Paso on the basis requested in the complaint, but in the meantime express rates on cream had been increased 25 per cent. On June 17, 1918, we granted the express companies' application

for a 10 per cent increase in all interstate rates, *Proposed Increase in Express Rates*, 50 I. C. C., 385. The additional increase on cream was made under General Order No. 56 of the Director General and became effective January 1, 1919. The complaint has not been amended to make the Director General a defendant and therefore there remains for consideration only the question of reparation.

When complainant, a corporation, commenced to operate its creamery, Wells Fargo & Company, the only express company serving El Paso, maintained a schedule of distance rates applicable from points reached by it in New Mexico to its offices in Texas, including El Paso. Complainant received some cream from points in New Mexico, also Texas over interstate routes, which were served by the American Express Company, the only other defendant, but for the joint transportation of shipments from such points there were no published distance or commodity rates and the second-class rates were legally applicable. On October 2, 1916, defendants voluntarily established joint commodity rates from specified points in New Mexico, Oklahoma, and Texas, to El Paso. The rates so established were the aggregate of the distance rates of each defendant to and beyond the point of interchange, and from Naravisa, N. Mex., the largest shipping point requiring two-company service, distant from El Paso 379 miles, was 97 cents per 10-gallon can.

The second-class rate was $1.95 per 100 pounds. The express classification provides that cream in ordinary milk cans shall be estimated to weigh 10 pounds per gallon, so that the rate per 10-gallon can of cream from Naravisa prior to October 2, 1916, was $1.95. The tariffs on file with us show that this rate exceeded the aggregate of the intermediate rates and, not having been protected by fourth section application, was in violation of the act.

Contemporaneously with the application of second-class rates Wells Fargo & Company's rate to El Paso for the same distance over its own line was 65 cents.

We find that the rates applied to the joint transportation of cream in cans from points in New Mexico and Texas over interstate routes between April 1, 1916, and October 2, 1916, which exceeded the aggregate of the intermediate rates were unreasonable, and that complainant made shipments, was damaged, and is entitled to reparation in a sum equal to the difference between the charges collected and what it legally would be required to pay upon the basis of the aggregate of the intermediate rates.

Upon this record the amount of reparation due can not be determined. Complainant should, in accordance with rule V of the Rules of Practice, prepare a statement showing the details of shipments which moved over defendants' lines jointly between April 1, 1916,

and October 2, 1916, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

Upon the evidence of record the joint commodity rates established October 2, 1916, have not been shown to be unreasonable.

An exhibit prepared by complainant of all shipments received between April 1, 1916, and October 2, 1916, seems to indicate overcharges in some instances and undercharges in other instances. Proper correction of these errors should be made to conform with the published rates.

No. 10256.

BEAUMONT CHAMBER OF COMMERCE ET AL.

v.

DIRECTOR GENERAL, BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY, ET AL.

Submitted February 14, 1919. Decided October 24, 1919.

Rate of 25 cents per 100 pounds on clean rice, carloads, from Beaumont, Tex., to New Orleans, La., not found unreasonable, but found unduly prejudicial to the extent that it exceeded or exceeds by more than 5 cents per 100 pounds the rate contemporaneously maintained on like traffic from Lake Charles, La., to New Orleans; the undue prejudice ordered removed. *Orange Rice Mill Co.* v. *T. & N. O. R. R. Co.*, 49 I. C. C., 250, followed. Reparation denied.

Charles A. Bland for complainants.

F. A. Leffingwell for Houston Chamber of Commerce and *A. Pace* for Lake Charles Rice Milling Company of Louisiana, interveners.

H. M. Garwood, *E. H. Thornton*, and *Baker*, *Botts*, *Parker & Garwood* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainants are the Beaumont Chamber of Commerce, an incorporated commercial organization, and four corporations, members of this organization, engaged in buying, milling, and selling rice and rice products at Beaumont, Tex. By complaint filed September 6, 1918, they allege that defendants' rate of 25 cents per 100 pounds on clean rice in carloads from Beaumont to New Orleans, La., is unreasonable and unduly prejudicial as compared with a rate of 19 cents per 100 pounds on the same commodity in carloads from Lake Charles, La., to New Orleans. Complainants ask a reasonable rate for the future and reparation on shipments moving subsequent to the filing of the complaint herein. Rates are stated in cents per 100 pounds.

The Houston Chamber of Commerce, of Houston, Tex., and the Lake Charles Rice Milling Company of Louisiana, of Lake Charles, intervened, the former to resist any change in the present Houston-Beaumont group relationship of rates from those points to New

Orleans, and the latter to resist any increase in the present rate from Lake Charles to New Orleans.

For a number of years prior to March 4, 1917, the rate on clean rice in carloads from Beaumont to New Orleans was 15 cents, which was 1 cent over the rate on interstate traffic from Lake Charles to New Orleans. On the date mentioned the rate from Beaumont was increased to 20 cents. This rate was attacked by shippers at Beaumont. *Orange Rice Mill Co.* v. *T. & N. O. R. R. Co.*, 49 I. C. C., 250. In our report in that case we found that this rate was not unreasonable, but that it was unduly prejudicial to the extent that it exceeded by more than 5 cents the rate contemporaneously maintained on like traffic from Lake Charles to New Orleans, and the undue prejudice was ordered removed. On June 25, 1918, pursuant to General Order No. 28 of the Director General, the rate from Beaumont was increased to 25 cents. On July 1, 1918, defendants increased the rate from Lake Charles to 19 cents. These rates are still in effect, so that under the present adjustment the Beaumont rate is 6 cents over the rate from Lake Charles.

A transcript of the testimony taken in the *Orange Rice Mill Case*, *supra*, was introduced as an exhibit by complainants. They also introduced certain rate comparisons which show that under the present rates the earnings on this traffic per ton-mile and per car-mile are higher from Beaumont than from Lake Charles, although the distance from Beaumont is 60 miles greater to New Orleans. While ton-mile and car-mile earnings generally decrease as distance increases, the fact that these earnings under the rate from Beaumont are greater than those under the rate from Lake Charles does not of itself establish the unreasonableness of the rate from Beaumont. At the hearing complainants attacked the adjustment under which Beaumont, Galveston, and Houston are grouped with respect to rates on clean rice to New Orleans and contend that this grouping arrangement, which has been in effect for several years, operates to the disadvantage of rice shippers at Beaumont. No showing, however, has been made that would warrant our disturbing this adjustment.

At the hearing defendants asked, without objection, that General Order No. 28, together with the certificate of the Director General to the Commission, be considered as in evidence. They contend that the reasonableness *per se* of the rate increased by the Director General was established in the *Orange Rice Mill Case*, *supra*, and observe that the propriety of the 25 per cent increase in rates ordered by the Director General is not disputed in this proceeding.

The conclusion which we reach is based upon the facts of this case and is not to be construed as enunciating a principle applicable to all cases where percentage increase of rates has changed the spread between them.

Upon the whole record we find that the rate assailed on clean rice in carloads, from Beaumont to New Orleans, was not and is not unreasonable, but that it was, is, and for the future will be, unduly prejudicial to complainants to the extent of its excess by more than 5 cents per 100 pounds over the rate contemporaneously in effect on like interstate traffic from Lake Charles to New Orleans. This undue prejudice must be removed.

Complainants have not shown that they have been damaged by reason of the undue prejudice found to exist, and reparation is denied.

An appropriate order will be entered.

No. 10477.[1]

DIAMOND MATCH COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted May 5, 1919. Decided October 24, 1919.

Rate charged on three carloads of matches from Chico, Calif., to Albuquerque, N. Mex., and Holbrook and Prescott, Ariz., found to have been unreasonable. Reparation awarded.

J. R. Gray for complainant.

R. V. Fletcher and *Alex. M. Bull* for Director General and Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation, by complaints seasonably filed, seeks reparation on three carloads of matches shipped April 5 and September 12, 1917, and November 17, 1916, from Chico, Calif., to Albuquerque, N. Mex., and Holbrook and Prescott, Ariz., alleging that the rates charged were unreasonable to the extent that they exceeded $1.10 per 100 pounds, and that those to Albuquerque and Holbrook were in violation of the fourth section. Rates will be stated in cents per 100 pounds.

The shipments, weighing 77,959 pounds, moved via the Sacramento Northern Electric Railroad, formerly the Northern Electric Railway, from Chico to Sacramento, Calif.; Oakland, Antioch & Eastern Railway (electric) to Bay Point, Calif.; thence via the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, to the respective destinations; and charges were collected in the sum of $1,052.44 at the legally applicable combination rate of $1.35, composed of commodity rates of 25 cents to Bay Point and $1.10 beyond.

At the time these shipments moved defendants had in effect a rate of $1.10 from Chico to Alameda, N. Mex., a point on the main line of the Santa Fe 8 miles beyond Albuquerque and 264

[1] This report also embraces No. 10477 (Sub-No. 1), Same *v.* Same.

miles beyond Holbrook. Prescott is on a branch line of the Santa Fe connecting with the main line at Ash Fork, Ariz., 149 miles west of Holbrook. The indicated departures from the long-and-short-haul rule of the fourth section were unauthorized and unprotected by applications for relief and therefore in violation of said rule. The rate of $1.10 applied over defendants' lines from Chico to points involving a transcontinental haul, such as Atlantic seaboard points. It also applied from Chico to Prescott, Holbrook, and Albuquerque by way of the Southern Pacific to Stockton, Calif., and the Santa Fe beyond, a route involving practically the same movement over the rails of the Santa Fe as the route used. Subsequently the $1.10 rate was made applicable over the route used.

The rate of $1.35 charged yields, on the average loading of 25,986 pounds a car-mile revenue of 33.3 cents for the short-line distance of 1,055 miles from Chico to Holbrook, which is typical of the destinations. A rate of $1.10 would yield 27.1 cents per car-mile.

The defendant electric lines expressed willingness to make reparation on our special docket. The Santa Fe contests the claims, and upon authority of *Utah Wholesale Grocery Co.* v. *N. & W. Ry. Co.*, 39 I. C. C., 345, urges that the rate applicable via the route of movement has not been shown to be unreasonable. In that case the lower rate claimed was contemporaneously applicable via another route and had been in effect previously via the route of movement. We said in dismissing the complaint:

> Neither the application of a lower rate over another route nor the former application of a lower rate over the route of movement of itself affords any basis for holding that the rate charged was unreasonable or unjustly discriminatory.

But in this case the evidence tending to show unreasonableness in the rate assailed is not confined to the facts that a lower rate was applicable via another route and was subsequently made applicable via the route used.

We find that the rate charged was unreasonable to the extent that it exceeded $1.10 per 100 pounds; that complainant made the shipments as described and paid and bore the freight charges thereon at the rate herein found unreasonable; that it was damaged to the extent that the charges paid exceeded the charges which would have been collectible at the rate herein found reasonable; and that it is entitled to reparation in the sum of $194.89, with interest.

An appropriate order will be entered.

No. 9238.

JACOB E. DECKER & SONS

v.

DIRECTOR GENERAL, MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, ET AL.

Submitted November 12, 1919. Decided November 19, 1919.

1. Rates on fresh-salted meats from Mason City, Iowa, to Chicago, Ill., Cudahy, Wis., St. Louis and Kansas City, Mo., Wichita, Arkansas City, and Hutchinson, Kans., and Dallas, Tex., not shown to have been or to be unreasonable.

2. Rates legally applicable on shipments of fresh-salted meats from Mason City, Iowa, to Chicago, Ill., St. Louis, Mo., Cudahy, Wis., and Dallas, Tex., prior to November 3, 1916, found to have been those applicable to fresh meats from and to the same points. Complaint dismissed.

Walter E. McCornack and *R. L. Ellis* for complainant.
W. E. Prendergast for Western Classification Committee.
Walter H. Jacobs and *Frank H. Towner* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, *Commissioner.*

This complaint was filed September 30, 1916, accompanied by a suggestion that it be consolidated with No. 8436, a general investigation then pending. Two years later, when the Director General of Railroads was made an additional party defendant, counsel for complainant requested that the case be heard separately, which was done. This accounts for the delay between the filing of the complaint and the recent hearing.

Complainant operates a meat-packing plant at Mason City, Iowa. The original complaint attacked rates to destinations in western classification territory, and all points west of the Indiana-Illinois state line, but, as amended at the hearing, the destinations were confined to Wichita, Hutchinson, and Arkansas City, Kans.; Kansas City and St. Louis, Mo.; Chicago, Ill.; Dallas, Tex.; and Cudahy, Wis. Cudahy is near Milwaukee, Wis., and takes the same rates. From Mason City to these destinations the commodity rates on fresh meats and fresh-salted meats are the same, and are higher than the commodity rates on packing-house products. The higher rates are alleged to be unreasonable when applied to the transportation of cer-

tain fresh meats, packed in salt, in bulk in carloads, first, to the extent that they exceeded or exceed the rates on packing-house products, and second, to the extent that they exceed a just proportion of lower rates on fresh-salted meats than on packing-house products, accorded complainant's competitors. Complainant purposely refrained from alleging unjust discrimination or undue prejudice.

On certain shipments to Chicago, St. Louis, Cudahy, and Dallas made prior to the latter part of the year 1916, complainant paid rates applicable to packing-house products. Defendants contend that the legal rates were those then applicable on fresh meat. Waiver of the alleged undercharges is asked in respect of these shipments. Complainant also asks for reparation on all shipments of fresh-salted meats from Mason City to the four cities last named from May 5, 1914, and subsequently. A statement of the shipments was filed May 19, 1916. On those that were delivered more than two years prior thereto, complainant paid, March 1, 1915, the amount of the charges for which it asks reparation. Rates are stated herein in cents per 100 pounds. Errors in rates stated of record, disclosed by a check of the tariffs, have been corrected.

Mason City is 351 miles from Kansas City, 355 miles from Chicago, and 441 miles from St. Louis. It is in a rate group and, as to fresh meats and packing-house products takes the same rates as St. Paul, Austin, and Albert Lea, Minn.

Although the classification ratings are not attacked it is of interest to note that western classification rates meats, fresh, not salted, loose or in packages, carload minimum 20,000 pounds, third class; hams, shoulders, sides or other hog meats, not otherwise indexed by name, salted, loose, carload minimum 28,000 pounds, third class; cured, n. o. i. b. n., dried, dry salted, pickled, or smoked, in packages or loose, carload minimum 30,000 pounds, fifth class. In the *Consolidated Classification Case*, 54 I. C. C., 1, the carriers proposed a reduction of the rating applicable to fresh-salted meats from third class to fourth class. Commodity rates apply from Mason City to the points of destination in question. There is no attack upon those applicable to the transportation of fresh meat or of packing-house products.

Meats of all kinds, fresh, dry salted, sweet pickled, fresh salted, and packing-house products are transported in refrigerator cars. Fresh meat is hung on hooks in the car, and loads less heavily than do the other products. Fresh-salted meat, when shipped loose, is laid in tiers upon the car floor and each tier is sprinkled with salt. About 1 per cent of the load is salt.

There is no difference in the refrigeration of fresh meat and fresh-salted meat except that the former requires a little more salt and ice than the latter. The record indicates that the sole

transportation distinction between fresh meat and fresh-salted meat is the difference in car loading. The average weight in pounds per carload of complainant's shipments for the year ended March 1, 1917, was: Fresh meats 23,700; dry-salted meats 30,000; fresh-salted meats 30,239; packing-house products 30,592; and sweet-pickled meats 31,400.

As we have noted, from Mason City to all these destinations the rates applicable to the transportation of fresh meats and fresh-salted meats are the same. Lower rates apply alike to the transportation of packing-house products, dry-salted meats, and sweet-pickled meats from Mason City to Chicago, St. Louis, and Kansas City, but to Wichita, Arkansas City, and Hutchinson, the rates on dry-salted meats and sweet-pickled meats are lower than the rates on packing-house products. The rates on fresh meats and fresh-salted meats from Mason City are: To Chicago 22.5; to St. Louis 26.5; to Wichita and Hutchinson 87; to Arkansas City 93; and to Dallas $1.48. Complainant asks that rates on fresh-salted meats be held unreasonable to the extent that they exceed the following: To Chicago 20 cents, the rate applicable on packing-house products from Mason City to Chicago; to St. Louis 25 cents, the rate applicable on packing-house products from Mason City to St. Louis; to Kansas City 15 cents, the rate applicable on "salted meats" from Kansas City to Wichita, Arkansas City, and Hutchinson, Kans.; to Wichita, Arkansas City, and Hutchinson 41.5 cents, the rates on dry-salted meats and sweet-pickled meats from Mason City to those destinations; and 87 cents to Dallas, the rate on packing-house products from Mason City to Dallas.

From South Omaha, Nebr.; Sioux City, Iowa; St. Joseph and Kansas City, Mo., to Chicago, the rate on fresh meats, packing-house products, dry-salted meats, sweet-pickled meats, and fresh-salted meats is the same, 29.5 cents; a similar equality of rates applies from South Omaha, St. Joseph, and Kansas City to St. Louis, 23 cents; from Sioux City to St. Louis, 27 cents; from Ottumwa, Iowa, to St. Louis and Chicago, 18 cents.

From all the points to Wichita, Arkansas City, and Hutchinson, uniformity of rates is not so marked. The following statement shows rates from the points named to Wichita:

From—	Fresh meats.	Packing-house products.	Salted meats.
	Cents.	*Cents.*	*Cents.*
South Omaha	70	49	22.5
Sioux City	82.5	52.5	26.5
Kansas City and St. Joseph	62.5	37.5	15
Chicago	87	67	44
St. Louis	80.5	60.5	37.5

The rates on these commodities from the same points to Hutchinson are the same, except that the rate on fresh meats from South Omaha is 81.5 cents, and that on fresh meats from Sioux City is 89 cents.

The following statement shows rates from the points named to Arkansas City:

From—	Fresh meats.	Packing-house products.	Salted meats.
	Cents.	*Cents.*	*Cents.*
South Omaha	75	51.5	25
Sioux City	89	55	29
Kansas City and St. Joseph	71.5	40	15
Chicago	93	69.5	44
St. Louis	87	63	37.

The rates from the Missouri River points apply on "salted meats." The rates from Chicago and St. Louis specifically apply on meats, fresh or fresh salted.

Complainant compares the rates complained of with those on the same kind of meats from certain Missouri River cities to Chicago, St. Louis, and the named Kansas destinations. The following statement shows the distances in miles, the third-class rates, the rates on fresh-salted meats, the percentages those rates are of the third-class rates, the revenue per ton-mile in mills, and the revenue per car-mile, in cents, from Mason City and other originating points, to Chicago. The per car-mile revenues are based on an average loading of 30,200 pounds:

To Chicago from—	Distance.	Rates on fresh-salted meats.	Third class.	Percentage of commodity rates to third class.	Per ton-mile.	Per car-mile.
	Miles.	*Cents.*	*Cents.*		*Mills.*	*Cents.*
Sioux Falls, S. Dak	547	30.5	59	51.7	11.2	16.84
St. Paul, Minn	396	22.5	50	45	11.4	17.16
Des Moines, Iowa	358	20.5	45	45.5	11.4	17.20
Sioux City, Iowa	510	29.5	56.5	52.2	11.6	17.52
Albert Lea, Minn	383	22.5	50	45	11.7	17.73
South Omaha, Nebr	488	29.5	56.5	52.2	12.1	18.2
St. Louis, Mo	284	18	36	50	12.6	19.01
St. Joseph, Mo	468	29.5	56.5	52.2	12.6	18.98
Mason City, Iowa	354	22.5	50	45	12.7	19.14
Ottumwa, Iowa	280	18	41.5	43.4	12.9	19.40
Kansas City, Mo	454	29.5	56.5	52.2	13	19.64
Waterloo, Iowa	275	20	42.5	47	14.5	21.96
Cedar Rapids, Iowa	220	17	39	43.6	15.5	23.34

The rate of 18 cents from St. Louis to Chicago applies on "meats, fresh dressed." The class rates from St. Louis to Chicago are governed by the Illinois classification, which rates "meats. dressed,

fresh, of all kinds," in carloads, fourth class; fresh-salted meats are not specifically classified, but cured meats, i. e., smoked, dried, and salted, are rated. The fourth-class rate from St. Louis to Chicago, governed by the Illinois classification, is 29 cents.

If we group points with which Mason City is grouped and likewise group the Mississippi River points, the resulting car-mile earnings, from Mason City, St. Paul, and Albert Lea, are 17.98 cents. The statement shows that the rate on fresh-salted meat from Mason City and the points with which it is grouped to Chicago is a lower percentage of the third-class rate from and to those points than is found from any other point except Ottumwa and Cedar Rapids; but with the exception of St. Paul and Albert Lea the revenues per ton-mile and per car-mile are higher from those points than from Mason City. If the rate from Mason City to Chicago were reduced to 20 cents, as prayed by complainant, less earnings would accrue from it than from any of the rates shown except that from Sioux Falls to Chicago.

To St. Louis the revenues per ton-mile range from 9.3 mills from St. Paul to 16.6 mills from Kansas City, and those from Mason City are 12 mills. A reduction to 25 cents would yield 11.1 mills per ton-mile.

Defendants show that the car-mile earnings on various commodities from Mason City exceed those on fresh-salted meat. The inference is that some of these commodities, of lower grade than fresh-salted meats, afford the carriers better earnings than does that commodity.

Similar comparisons are submitted by defendants in respect of the percentages that the fresh-salted-meat rates from Mason City to Wichita and Dallas are of the third and fourth class rates which, generally, indicate somewhat similar differences. They tend to show that the relationship of fresh-salted-meat rates to the class rates is generally more favorable to Mason City than to the other points.

The rate of 15 cents from Kansas City and St. Joseph to Wichita, Arkansas City, and Hutchinson, applicable to the transportation of "salted meats," was particularly emphasized by complainant. This rate, although the carriers endeavored to increase it, was upheld by the Public Utilities Commission of the state of Kansas from Armourdale, Kans., to Wichita, and, necessarily, influenced the rate from Kansas City, of which Armourdale is a suburb. It was increased from 12 cents to 15 cents under General Order No. 28 of the Director General of Railroads. Defendants contend that it is unduly low and that neither it nor other rates influenced thereby should be used as a measure in determining the reasonableness of the rates from Mason City.

Primarily, complainant urges that upon two basic principles the rates in issue should be held unreasonable. The first is car loading. Fresh-salted meats load almost as heavily as do packing-house products, and some 6,500 pounds per car more than fresh meats. The second is that the movement of fresh-salted meats is a plant-to-plant service and the empty haul of the refrigerator car is either reduced or eliminated. The principle that the rate per 100 pounds should be lower on the commodity which loads more heavily than on another like commodity loading more lightly but otherwise transported under substantially similar circumstances and conditions is sound. Its application is sometimes difficult. If the basic rate is already weighted with the various factors of risk, value, perishability, etc., and affords reasonable compensation for the service performed, then the application of the principle would appear to be clear. Here we have rates on fresh meats which may or may not, so far as the record discloses, be reasonable. Possibly the application of the principle would require the rate on fresh meat to be increased. We have seen that from many points packing-house products, dry-salted meats, and sweet-pickled meats move on the same rates as do fresh meats. We are not warranted on this record in holding that on this account the rates on fresh meats from Mason City to these destinations are unreasonable when applied to fresh-salted meats.

The record does not contain data that warrants giving consideration to the statement that the empty haul of refrigerator cars is largely reduced or eliminated when fresh-salted meats are transported.

Secondarily, complainant argues that there should be uniformity of treatment in respect of rates, and if rates on fresh-salted meats are maintained in one territory the same as or lower than the rates on packing-house products, they are presumed to be reasonable. In this connection complainant cites decisions in which it was held that the rates on one commodity should be the same as, or not higher than, those applicable upon another analogous commodity. In some of those cases defendants admitted the contentions of the complainants; in others the issue was one of unjust discrimination or undue prejudice. Generally the question was whether or not the rates on two like commodities should be the same. Complainant asks that rates which are now the same shall be changed to make those on fresh-salted meats lower than those on fresh meats because the defendants in some instances maintain lower rates on the first than on the second named commodity, although, as we have seen, in many instances the rates are the same, and the lower rates

do not compare unfavorably with those paid by complainant on fresh meat.

Complainant bases its case in respect of the rates to Chicago, Cudahy, and St. Louis on the fact that in some instances, between other points, the rates on fresh-salted meats are the same as those applicable to packing-house products. But as we said in *Decker & Sons* v. *C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, "towns competing with Mason City could maintain with equal logic that the latter city is being unduly favored to the extent that its rate is lower on packing-house products than on fresh meat."

The rate structure, if it may be called such, as disclosed of record in this case, is characterized by such a lack of uniformity that it can not be said that any basis is so prevalent as to amount to a practice. We are of the opinion and find that the application of a small quantity of salt to fresh meat does not change its character as such, and where there is no specific rate on fresh-salted meat the rate legally applicable is the rate contemporaneously maintained on fresh meat from and to the same points.

We have seen that the rate on fresh meat from Mason City to Dallas is $1.48. The rate on fresh meat from St. Paul to Dallas is $1.34. Mason City is intermediate St. Paul and Dallas via the line of the Minneapolis & St. Louis Railroad and its connections, and is in the same rate territory as St. Paul on traffic to Texas. The rate of $1.34 should also be applied to the transportation of fresh-salted meats from Mason City. The defendants state that they will not attempt to maintain from Mason City on fresh meats a rate any higher than that maintained from St. Paul to Dallas on the same commodity. We will expect this adjustment to be made.

Undercharges are alleged to be due on fresh-salted meats moving from Mason City to St. Louis and Chicago.

The commodity tariffs in effect prior to November 3, 1916, provided:

> Meats, fresh, rates, C. L., will apply on Meats, Fresh, not otherwise indexed by name.

Packing-house products include the following articles:

> * * * Meats (Beef, Pork, or Mutton) (Cured or Pickled), in bulk or packages
> Meats, Cooked * * *

In other words, there was no specific rate applicable to fresh-salted meats. The western classification provided third-class rating for meats, fresh, n. o. i. b. n., and made no specific provision or rating for fresh-salted meats, until January 25, 1917. On November 3, 1916, the commodity item governing the application of fresh-meat rates was amended to read as follows:

Meats, Fresh, rates, C. L., will apply on Meats, Fresh or Green Salted, not cured (dried, salted or smoked), n. o. i. b. n.

Complainant paid rates applicable to packing-house products prior to this amendment; defendants contend that the rates applicable to fresh meats were legally applicable to fresh-salted meats. Other shippers, who also paid packing-house products rates on fresh-salted meats during the same period have paid the difference between the rates and the rates then applicable to fresh meats.

The application of the packing-house products rates was clear, definite, and specific; the term included no article other than those named, all others, including fresh-salted meats, were excluded.

We find that the application of a small quantity of salt did not change the character of these hog meats; they were still fresh, and that rates applicable to fresh meats from Mason City to Chicago and St. Louis should have been applied.

On the whole record we find that the rates attacked are not shown to have been or to be unreasonable. The complaint must be dismissed and it will be so ordered.

No. 9845.

KANSAS CITY BOLT & NUT COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY DIRECTOR GENERAL, ET AL.

Submitted May 20, 1919. Decided November 19, 1919.

1. Class D rates charged for the transportation of scrap iron or steel in carloads from Kansas and Nebraska points to Kansas City, Mo., not shown to have been unreasonable. Commodity rate applicable from the same points to Colorado common points shown to have been unduly prejudicial to Kansas City.
2. The carload commodity rate on scrap iron from St. Joseph, Mo., to Kansas City, Mo., interstate, not justified.

R. D. Sangster and *J. H. Tedrow* for complainant.

R. G. Merrick and *F. E. Andrews* for Atchison, Topeka & Santa Fe Railway Company; *C. C. P. Rausch* and *F. G. Wright* for Missouri Pacific Railroad Company; *J. C. La Coste* for Chicago, Rock Island & Pacific Railway Company; *L. T. Wilcox* and *H. A. Scandrett* for Union Pacific Railroad Company; *A. E. Haid* and *B. H. Stanage* for St. Louis-San Francisco Railway Company; and *J. W. Allen* for Missouri, Kansas & Texas Railway Company, and its receiver.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

Complainant, engaged in the manufacture of iron and steel articles at Kansas City, Mo., by complaint filed August 13, 1917, alleged that the class D rates applicable on scrap iron or steel in carloads from Kansas and Nebraska points to Kansas City, Mo., were unreasonable and unduly prejudicial as compared with the commodity rates contemporaneously maintained from the same points to Colorado common points, particularly Minnequa, Colo., there being located at that point, a short distance from Pueblo, the Colorado Fuel & Iron Company, one of complainant's competitors in the purchase of scrap iron or steel in Nebraska and Kansas. It further alleged that the rate of 6 cents per 100 pounds charged for the transportation of scrap iron from St. Joseph, Mo., to Kansas City, Mo., was unreason-

able *per se*. The Commission was asked to remove the alleged undue preference and prescribe reasonable maximum rates for the future.

Subsequently to the hearing an amended complaint was filed making the Director General of Railroads a party and alleging that the rates initiated by his General Order No. 28, effective June 25, 1918, are unjust and unreasonable in violation of section 10 of the federal control act. Further hearing was waived and the Director General's certificate with regard to the increased rates made a part of the record.

Rates, except when otherwise indicated, are stated in cents per 100 pounds. Pueblo will be used herein as representative generally of Colorado common points and particularly of the location of complainant's competitor, the Colorado Fuel & Iron Company.

We will set forth the rate situation as it existed at the time of the hearing. The defendants maintained a blanket commodity rate on scrap iron and steel, in carloads, between points taking Missouri River rates, Sioux City, Iowa, on the north to Joplin, Mo., on the south and Colorado common points, including Pueblo, of 16.75 cents, minimum weight 40,000 pounds, which applied from and to intermediate territory subject to class D rates as maxima, scrap iron or steel being rated class D in the western classification governing. This blanket-rate adjustment resulted in the application to Kansas City of the class D rates from Kansas and Nebraska points east of a line drawn roughly through Arkansas City, Wichita, Hutchinson, Salina, and Concordia, Kans., and Superior and Lincoln, Nebr., with the exception that a commodity rate of 11 cents, minimum weight 40,000 pounds applied from Fremont, Nebr., and a commodity rate of 7 cents, minimum weight 40 000 pounds from Omaha, Lincoln, Beatrice, Auburn, and Falls City, Nebr. There were also commodity rates from Atchison and Leavenworth, Kans., and St. Joseph, Mo., somewhat lower than the class D rates. The commodity rate of 6 cents, minimum weight 40,000 pounds, from St. Joseph is one of the rates attacked herein and will be dealt with separately hereafter. The class D rates into Pueblo, being upon a higher level than those into Kansas City, are reached as maxima a comparatively short distance east of that point in Colorado.

The principal scrap-producing territory in Kansas and Nebraska, it was testified, is east of the line indicated above designating the approximate boundary of the application of the class D rates to Kansas City. Being located much nearer than is Pueblo to this producing territory, complainant contends that the present rate adjustment does not properly reflect the natural advantage of its location.

The rate situation has been changed somewhat, of course, as under General Order No. 28 the blanket commodity rate became 21 cents and the class rates were increased 25 per cent.

The following table, compiled from exhibits presented, shows the class D and commodity rates, distances, ton-mile and car-mile earnings under the formerly applicable rates from representative producing points to Kansas City, Pueblo, St. Louis, Mo., and Chicago, Ill.:

Commodity and Class D rates and earnings under rates applicable on scrap iron or steel.

From—	To—	Distance.	Commodity rate.	Class D rate.	Earnings.		
					Per ton-mile.		Per car-mile.
					Commodity rate.	Class rate.	
		Miles.	*Cents.*	*Cents.*	*Mills.*	*Mills.*	*Cents.*
Topeka, Kans	Kansas City	67	16.75	7	.....	20.9	62.6
	Pueblo	554	16.75	30	6	.....	17.9
	St. Louis	344	17	18	9.8	.....	29.6
	Chicago	525	22	23	8.3	.....	25.1
Coffeyville, Kans	Kansas City	168	16.75	14	.....	16	50
	Pueblo	592	16.75	33	5.6	.....	17
	St. Louis	433	19.5	19	9	.....	26.3
	Chicago	631	24.5	24	7.6	.....	22.8
Wichita, Kans	Kansas City	213	16.75	16	.....	15	45
	Pueblo	447	16.75	30	7.7	.....	22.4
	St. Louis	479	22	25	9.8	.....	27.5
	Chicago	671	27	30	8	.....	24.1
Great Bend, Kans	Kansas City	267	16.75	17	12.5	.....	37.6
	Pueblo	347	16.75	30	9.6	.....	29.5
	St. Louis	544	26.75	29	9.8	.....	29.5
	Chicago	725	31.75	34	8.7	.....	26.2
Fort Scott, Kans	Kansas City	99	.....	7	.....	14.6	42.1
	Pueblo	616	16.75	33	5.4	.....	16.3
	St. Louis	326	11.5	15	7	.....	21.1
	Chicago	550	16.5	20	6	.....	18
Lincoln, Nebr	Kansas City	206	7	13.5	6.7	.....	21.7
	Pueblo	556	16.75	30	6	.....	19.3
	St. Louis	539	13	16.5	4.8	.....	15.4
	Chicago	538	18	21.5	6.6	.....	21.4
Grand Island, Nebr	Kansas City	286	16.75	20	11.7	.....	37.5
	Pueblo	544	16.75	30	6.1	.....	19.7
	St. Louis	562	23	26.5	8.2	.....	26.2
	Chicago	630	28	31.5	8.8	.....	28.4
Superior, Nebr	Kansas City	245	16.75	17.7	13.7	.....	43.7
	Pueblo	517	16.75	30	6.2	.....	20.7
	St. Louis	529	23	26.5	8.7	.....	27.8
	Chicago	657	28	31.5	8.2	.....	27.2
Tulsa, Okla	Kansas City	257	15	23	11.7	.....	29.8
	Pueblo	658	25	42	7.5	.....	19.5
	St. Louis	424	20	31	9.4	.....	24.2
	Chicago	726	27	36	7.4	.....	18.5
Oklahoma City, Okla	Kansas City	344	17	26	9.8	.....	25.3
	Pueblo	618	25	43.5	8	.....	20.7
	St. Louis	542	22	39	8.1	.....	20.8
	Chicago	792	27	44	6.8	.....	17.5

From this and similar exhibits presented, it is contended that the basis of scrap iron or steel commodity rates in this territory is somewhat lower than the class D rates. Thus it is noted that the commodity rates from Lincoln and Omaha and points in southeastern Nebraska and from Oklahoma are much less than the class D rates from the same points. There is applicable between the Mississippi and Missouri rivers a commodity rate on scrap iron or steel of 10 cents. This rate applies from a large part of Iowa south and west of Dubuque to both Kansas City and St. Louis, Mo. The class D rate between the rivers is 13.5 cents. It is pointed out that all these commodity rates are considerably lower than the class D rates. It is

also shown that commodity rates on scrap iron applying between Oklahoma and Kansas points are likewise lower than class D rates. From these comparisons it is argued that the application of the full class D rates from the Kansas and Nebraska producing points to Kansas City is unreasonable.

The complainant states that its principal interest is in the relationship of the rates to Kansas City and Pueblo. Referring to the above table it is pointed out that for similar distances the rates to Pueblo are much lower than the rates to Chicago and St. Louis. The rate from the Missouri River to Chicago for an approximate average distance of 485 miles is 15 cents, while that to Pueblo for an approximate average distance of 615 miles is 16.75 cents. The rate from Wichita to Kansas City for a distance of 213 miles is 16 cents while to Pueblo for a distance of 447 miles it is but 0.75 cent more. To accentuate these comparisons, attention is called to the fact that the general level of rates from this territory toward the east is considerably lower than toward the west. These comparisons were criticised by the defendants in that they do not show what they state is the same condition reversed in the territory further west. However, complainant replies that it is not interested in the rates from western Kansas and eastern Colorado, as that territory is barren of scrap iron and it would be satisfied if commodity rates to Kansas City were established graded up with the distance, provided a similar plan were followed in establishing rates from Kansas and Nebraska points to Pueblo. As representative of the anomalies resulting from the present adjustment, complainant refers to the rates from Coffeyville, Kans., and Tulsa, Okla. From the former point, located on the Kansas-Oklahoma state line almost due south of Kansas City, the distance being 424 miles in favor of Kansas City as against Pueblo, the difference in rates is but 2.75 cents, while from Tulsa but a short distance to the south of Coffeyville, the distance being 401 miles in favor of Kansas City, the difference in rates is 10 cents.

The following statement showing the rates on bar iron, bolts, and nuts, and fifth-class rates from Kansas City and Pueblo was submitted by complainant for the purpose of showing what it considers a more proper relationship of rates:

Rates on bar iron, bolts and nuts, and fifth-class rates.

To—	From Kansas City.				From Pueblo			
	Distance.	Bar iron.	Bolts and nuts.	Fifth class.	Distance.	Bar iron.	Bolts and nuts.	Fifth class.
	Miles.	*Cents.*	*Cents.*	*Cents.*	*Miles.*	*Cents.*	*Cents.*	*Cents.*
Coffeyville, Kans.....	168	28	28	28	592	47	47	47
Hutchinson, Kans...	235	36	36	36	387	44	44	44
Independence Kans.	166	26	26	26	567	47	47	47

Complainant uses no pig iron and but three grades of scrap—soft steel and grades Nos. 1 and 2 of wrought iron, of which it purchases from scrap-iron dealers about 2,000 tons per month, and from the railroads from 700 to 800 tons per month. All this scrap, it testified, is sold delivered on competitive bids in which Pueblo, Kansas City, Chicago, St. Louis, and the various other manufacturing centers participate. Chicago and St. Louis being the largest consuming points, set the market. While on railroad scrap produced in Kansas City and near-by territory it might have a slight advantage at times, as a general rule the carriers demand the St. Louis-Chicago prices without the usual deduction of freight to these points, being in a position to place their scrap in those markets at a nominal cost. For this reason, as to this material, which appears to be a considerable source of complainant's supply, the fact that much of it is produced at or near Kansas City does not generally inure to complainant's benefit. Complainant's competitor at Pueblo not only uses pig iron, but is able to use the various grades of scrap including those which complainant can not use. Thus, it was testified, Pueblo can offer a dealer a price for his entire scrap collection without requiring him to sort it, and this consideration very often causes dealers to sell to Pueblo rather than to complainant. The supply in the territory concerned of the particular grades of scrap complainant can use is limited, and it says it must get a major portion of it in order to keep its plant in full operation.

The selling price of iron or steel articles, it was testified, is based upon St. Louis. Thus the price delivered at a point in Kansas is the St. Louis base price plus the rate to that point from St. Louis. As a result, the market in the territory adjacent to Pueblo is on a higher basis than that adjacent to Kansas City. While there is considerable scrap produced at Pueblo and near-by points and some in western Kansas and eastern Colorado, complainant states that it is unable to compete for this on account of the higher market on iron and steel articles at Pueblo, and the fact that its competitor at that point can use a large variety of scrap. These considerations were urged by complainant as demonstrative of the necessity that a proper relationship be maintained between the rates to Pueblo and Kansas City, insuring to it the full benefit of its location in order that it might successfully compete with the former point.

On behalf of the reasonableness of the class D rates applying on scrap iron from Kansas and Nebraska points to Kansas City defendants offered exhibits showing that these are lower than the class D rates prescribed as maxima by the Commission in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, and the intrastate distance rates applying on this commodity in Missouri, Kansas, and Nebraska.

It was also shown that the commodity rates on scrap iron applying for similar distances to Wichita, Kans., Oklahoma City, Okla., Fort Worth, Tex., and Little Rock, Ark., and the class D rates applying as maxima under the 10-cent commodity rate between the Mississippi and Missouri rivers from points in Missouri to Kansas City are somewhat higher than the rates applying from Kansas points for similar distances.

Defendants offered the following exhibit showing the movement of this commodity, average haul, average rate, and average revenue from points on the Atchison, Topeka & Santa Fe Railway in Kansas to Kansas City and Pueblo during the year ended June 30, 1917:

Shipments from 87 Kansas towns to Kansas City:		
Total number of cars		308
Total number of tons		8,033
Average haul	miles	162
Average rate		11.4
Average revenue per ton-mile	mills	14.1
Shipments from 121 Kansas towns to Pueblo:		
Total number of cars		414
Total number of tons		10,242
Average haul	miles	447
Average rate		16.75
Average revenue per ton-mile	mills	7.5

Another exhibit, indicating the points on the Missouri Pacific from which shipments were made during five months in 1917 to Kansas City and Pueblo, showed no movement to Kansas City from points west of Hutchinson. It is pointed out by defendants that according to this exhibit shipments originated at a larger number of points in western than in eastern Kansas; however, it is not contended that the volume of movement from western Kansas is comparable with that from the eastern part of the state, the exhibit being principally for the purpose of showing that there is a movement from western Kansas. This exhibit also shows a movement from Little Rock, Ark., to Pueblo, the rate being 31.75 cents, while there was no movement from this point over the Missouri Pacific to Kansas City under a rate of 27 cents. It also shows movement to Pueblo from Lincoln and Nebraska City, Nebr., Joplin, and other points in Missouri, and 27 carloads from Kansas City, from all of which points the rate is decidedly in favor of Kansas City and shipments to Pueblo from points in eastern Texas, from which the rate was 27.5 cents. No shipments are shown from Texas points to Kansas City.

This evidence, it is urged, demonstrates that the movement of scrap iron or steel from Kansas and Nebraska points is not controlled by the freight rate, but rather by commercial conditions, and

that the ability of Pueblo to use all kinds of scrap and sell its products in a higher market would still enable it to successfully compete for the scrap iron from this territory even though the rates to that point were considerably increased. They admit that the 16.75-cent rate is unduly low, and state that for this reason, and no other, it is their intention to increase it.

The evidence in this case shows that, in publishing commodity rates on scrap iron or steel, large territories of origin are blanketed where there is a comparatively long haul, but for the shorter distances class rates are applied. The application of low commodity rates for long distances is no doubt due to the fact that this is a low-grade commodity and would not move under the full class rates. The class D rate of 16 cents applied for distances of slightly over 200 miles to Kansas City, whereas for an additional haul of 400 miles to the same point there was an increase of but 0.75 cent. In the opposite direction to Pueblo, the comparison of the class rates with the commodity rate applied from Missouri River points is even more striking. Looking at the situation particularly at points on and adjacent to the line indicating the boundary of the application of the class D rates to Kansas City and considering the testimony which is not disputed, that rates east of this line are generally lower than west, in the absence of any justification for the comparatively lower rates to Pueblo, it appears that the present rate adjustment is unduly prejudicial to Kansas City.

As stated by complainant, it is interested principally in the relationship of rates. The class D rates from Kansas points compare favorably with the commodity rates applying from Oklahoma and Missouri, and Iowa to Kansas City. They are somewhat higher than the commodity rates from southeastern Nebraska. Considering the difference in traffic density and competitive conditions, they compare favorably with the commodity rate between the Mississippi and Missouri Rivers.

The rate on scrap iron from St. Joseph, Mo., to Kansas City, for a short-line distance of 60 miles was, at the time this complaint was filed, 6 cents. An increase in this rate from 5 cents was brought about in connection with several other increases which were under consideration in *Commodity Rates between Missouri River Points*, 28 I. C. C., 265. This increase, together with a number of others, was allowed to become effective as the result of an agreement between the shippers and the carriers. However, the complainant states it was not a party to that case. Practically the only justification offered by the defendants for this increased rate was a citation of a rate of 8 cents for 69 miles from Caney, Kans., to Tulsa, Okla., which was fixed by the Commission as a reasonable maximum rate. *Lebow* v.

A., T. & S. F. Ry. Co., Docket No. 6182, decided July 1, 1914. With regard to that rate it is not shown that the volume of movement or general traffic conditions in connection therewith are comparable with those between St. Joseph and Kansas City. Complainant calls attention to the fact that it competes with St. Louis in the purchase of scrap iron at St. Joseph and that when the increase in the rate to Kansas City was made no corresponding increase was made in the 10-cent rate to St. Louis.

The following rates on commodities applicable over the Chicago, Burlington & Quincy Railroad for a distance of 63.2 miles between Kansas City and St. Joseph were offered for the purpose of comparison. A stronger comparison is the 7-cent rate applying from Omaha, Lincoln, and southeastern Nebraska points.

Commodity.	Minimum weight.	Commodity rate.	Ton-mile earnings.	Classification ratings.	Class rate.
	Pounds.	*Cents.*	*Mills*		*Cents.*
Scrap iron	40,000	6	19	D	7
Rails	44,800	[1] 75	10.6	5	10
Track fastenings	40,000	[2] 75	11.9	5	10
Railway material	30,000	[2] 91.5	14.5	5	10
Undressed stone	40,000	4.25	13.4	E	5

[1] Per gross ton. [2] Per net ton.

WOOLLEY, *Commissioner:*

This case was argued upon exceptions to the foregoing statement of facts and a recommendation by the examiner that we find (1) that from points in eastern Kansas and Nebraska from which class D rates are applicable on scrap iron and steel to Kansas City, Mo., the complainant has not shown said class rates to be unreasonable; (2) that the adjustment of rates from said points of origin to Kansas City and to Colorado common points subjects the former to undue prejudice and disadvantage and unduly prefers the latter to the extent that the rates to Kansas City are less than 7 cents per 100 pounds lower than the rates contemporaneously maintained from the same points to Colorado common points; and (3) that the defendants have failed to justify the present increased rate of 7.5 cents from St. Joseph to Kansas City and that a rate of 6.5 cents be prescribed as a maximum rate to apply for the future on this traffic.

The effect of the second finding proposed would be to make 7 cents the minimum advantage of Kansas City over Colorado common points in the territory in eastern Kansas and Nebraska in which complainant largely purchases. Should the carriers continue their present method of publishing a blanket commodity rate between Colorado common points and the Missouri River, the advantage of Kansas City would increase as the Missouri River is approached, to the same extent as the class rates to Kansas City decrease.

By exceptions and in argument the complainant contended that the facts warrant the fixing of a greater minimum advantage to Kansas City than 7 cents, or the making of rates based more nearly on relative distances.

Upon consideration of all of the facts of record we adopt the report and conclusions of the examiner as the report and conclusions of the Commission. An appropriate order will be entered to give effect to these findings.

No. 10161.[1]

McKINNEY STEEL COMPANY
v.
NEW YORK CENTRAL RAILROAD COMPANY.

Submitted January 22, 1919. Decided November 7, 1919.

Rates on mill cinder, in carloads, from Cleveland, Ohio, to Charlotte, N. Y., found to have been unreasonable. Reparation awarded.

B. D. Shurtleff and *Chas. H. Watson* for complainant.
D. P. Connell for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of pig iron at Cleveland, Ohio, and Charlotte, N. Y. By complaints filed April 19 and May 21, 1918, as amended, it alleges that the rates charged on 99 carloads of mill cinder shipped from Cleveland to Charlotte, between May 28 and November 27, 1917, both inclusive, were unreasonable and unduly prejudicial and asks reparation. Rates are stated herein in amounts per long ton.

The shipments moved over the New York Central lines, 261 miles, or over the Erie Railroad and Buffalo, Rochester & Pittsburgh Railway, 329 miles. Charges were collected at the applicable rate of $1.86 on the shipments which moved prior to August 20, 1917, and at the applicable rate of $2.20 on the shipments which moved on and after that date.

[1] This report also embraces No. 10161 (Sub-No. 1), Same *v.* Erie Railroad Company et al.

Mill cinder is the drippings of reheated steel, and is used as a burden in the manufacture of pig iron, partly replacing iron ore. It is a very low-grade commodity. It was testified that during 1917 the average market prices per ton of mill cinder, pig iron, and the commodities which usually take the pig-iron rates were as follows: Mill cinder, $2 to $2.50; pig iron, $33 to $35; furnace salamander, $10; ferrosilicon, about $55; ingot molds and ingot-mold stools, $50.

The official classification rates mill cinder in carloads sixth class, but the carriers in this territory generally include it in the list of iron and steel articles taking the same rates as pig iron, which are somewhat less than sixth class. Where the movement is appreciable, commodity rates are established lower than the pig-iron rates. The rate on pig iron and articles taking the same rates, including mill cinder, from Cleveland to Rochester, N. Y., with which Charlotte is grouped on traffic from points in central freight association territory, was $1.80 prior to February 23, 1915. On that date the rate was increased to $1.86, following *The Five Per Cent Case*, 32 I. C. C., 325, and on August 20, 1917, to $2.20 following *The Fifteen Per Cent Case*, 45 I. C. C., 303. On June 25, 1918, the $2.20 rate was increased to $2.80 pursuant to General Order No. 28 issued by the Director General of Railroads. On November 1, 1918, the rate was further increased to $3.40, but on April 21, 1919, it was reduced to $3.30.

Complainant cited numerous commodity rates on mill cinder maintained by defendants in central freight association and eastern trunk line territories and intraterritorially. Where the pig-iron rates between the points cited approximated those assailed the commodity rates on mill cinder ranged from 16 to 69 cents lower than the corresponding pig-iron rates. The following rates, published by the New York Central during the period in 1917 when the rate of $1.86 applied from Cleveland to Charlotte, are illustrative:

From—	To—	Pig iron.	Mill cinder.
Cleveland, Ohio	Charlotte, N. Y	$1.86	$1.86
Cleveland, Elyria, and South Lorain, Ohio.	Dubois and Punxsutawney, Pa	1.86	1.48
Do	Ironton and Portsmouth, Ohio	1.80	1.52
Dunkirk, N. Y	Charlotte, N. Y	1.74	1.05
Buffalo, N. Y	Pittsburgh, Pa	1.84	1.52
Erie, Pa	Dubois and Punxsutawney, Pa	1.76	1.16
Do	Columbus, Ohio	2.00	1.62
Do	Imperial, Pa	1.48	1.26
Youngstown, Ohio	Dunkirk, N. Y	1.48	1.32
Troy, N. Y	Buffalo, N. Y	1.74	1.26
Elmira, N. Y	Secaucus, N. J	1.84	1.58
Depew, N. Y	Rochester and Charlotte, N. Y	.79	.58

A similar showing was made with respect to rates published by the Erie Railroad and the Buffalo, Rochester & Pittsburgh Railroad. Defendants concede that it was the general practice to make the

rates on mill cinder, wherever there was an appreciable movement, lower than the rates on pig iron, but contend that although the relative situation disclosed might properly be given consideration by the Commission in establishing a rate for the future, it does not justify a finding that the rates attacked were unreasonable in the past unless it is shown that the pig-iron basis is unreasonable as applied to mill cinder.

On traffic from Cleveland and other points in central freight association territory Dubois and Punxsutawney are grouped with Emporium, Pa. On the classes and practically all commodities, including pig iron, the same rates apply generally from Cleveland to points in the Rochester group, which includes Charlotte, as to points in the Emporium group, and complainant contends that the rates assailed were unreasonable to the extent that they exceeded the rate of $1.48 contemporaneously in effect to Dubois and Punxsutawney. On August 20, 1917, the pig-iron rate from Cleveland to Dubois and Punxsutawney was increased to $2.20 and on April 15, 1918, the mill-cinder rate was increased to $1.70, following *The Fifteen Per Cent Case*, *supra*. On June 25, 1918, pursuant to General Order No. 28, these rates were increased to $2.80 and $2.10, respectively.

On behalf of defendants it was testified that a special commodity rate on mill cinder from Cleveland to Dubois and Punxsutawney was first established in August, 1913, because of the request of Cleveland shippers and that $1.40 was arrived at as the proper figure in view of then existing rates of $1 and $1.10 on this traffic from Pittsburgh and New Castle, Pa., respectively, to Dubois and $1 from Pittsburgh and New Castle to Punxsutawney, over the Buffalo, Rochester & Pittsburgh Railroad, and $1.40 from Cleveland to Josephine, Pa., over the Pennsylvania lines. They urge that the rates assailed were not only not excessive but were entirely too low, and state that the $3.40 rate, established November 1, 1918, on pig iron from Cleveland to Charlotte, followed *Pollak Steel Co.* v. *B. & O. R. R. Co.*, 49 I. C. C., 238. In that case, however, as stated on page 240 of the report, there was no question of the intrinsic reasonableness of the rates in issue, the sole question for determination being one of relationship.

Shortly prior to the time complainant's shipments moved, as well as on later dates, the assistant general freight agent of the New York Central, at the solicitation of complainant, expressed a willingness on the part of his company to establish a rate of $1.70 on mill cinder from Cleveland to Charlotte, basing this figure on the then existing rate of $1.48 from Cleveland to Dubois and Punxsutawney plus the proposed increase subsequently authorized in *The Fifteen Per Cent Case*, *supra*.

Complainant further shows that there was a combination rate of $2.06 on this traffic from and to these points, based on Depew, N. Y., which was lower than the joint rate of $2.20 applied on the shipments moving after August 20, 1917. This combination was composed of the pig-iron rate of $1.48 from Cleveland to the Buffalo rate group, including Depew, and a local commodity rate of 58 cents from Depew to Charlotte. Defendants point out that the component from Depew to Charlotte was increased on December 5, 1917, to 70 cents, and state that it was a local rate made to meet a local situation and should have been restricted to intrastate traffic.

The $1.86 rate charged yielded 6.36 mills per ton-mile over the New York Central and 5.04 mills over the other lines; the $2.20 rate yielded 7.53 and 5.97 mills, respectively; and the $1.48 rate sought by complainant would have yielded 5.06 and 4.01 mills, respectively.

We find that the rates assailed were unreasonable to the extent that they exceeded $1.70 per long ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10696[1]

JACOB E. DECKER & SONS

v.

DIRECTOR GENERAL, MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, ET AL.

Submitted November 12, 1919. Decided December 2, 1919.

1. Defendants' bill-of-lading provisions with respect to the filing of claims or the institution of suits on account of loss, damage, or delay found not to prohibit the payment of meritorious claims, if seasonably filed with the carrier, after the two-year-and-one-day period, prescribed in the bill of lading as the maximum period for instituting suit, has elapsed.
2. The above bill-of-lading provisions found to have been and to be unreasonable, unjustly discriminatory, and unduly prejudicial, and defendants directed to modify these provisions in accordance with the conclusions announced herein.

Walter E. McCornack for Jacob E. Decker & Sons; *Luther M. Walter, John S. Burchmore,* and *F. T. Bentley* for National Industrial Traffic League; *C. D. Chamberlain, Fayette B. Dow,* and *Willis Crane* for National Petroleum Association; *C. M. Spargo* for E. I. Du Pont de Nemours & Company; *M. D. Warren* for Trenton Chamber of Commerce; *J. C. Lincoln* for Merchants' Association of New York and Brooklyn Chamber of Commerce; *C. S. Bather* for Rockford Manufacturers' & Shippers Association and American Furniture Manufacturers' Association; *A. E. Beck* for Merchants & Manufacturers' Association; *J. W. Bomgardner* for Trenton Chamber of Commerce and John A. Roebling's Sons Company; *C. T. Bradford* for International Harvester Company; *W. H. Chandler* for Boston Chamber of Commerce; *P. W. Coyle* and *J. W. Folk* by *P. W. Coyle* for St. Louis Chamber of Commerce; *Robert Cumming* for American Fruit & Vegetable Shippers' Association; *George H. Cushing* for American Wholesale Coal Association; *E. H. Draper* for Western Grocer Company; *J. H. Henderson* for Western Grocer Company and Fort Dodge Commercial Club; *Edwin H. Ferguson* for himself and others; *R. M. Field* for Peoria Association of Commerce and Illinois District Traffic League; *William F. Garcelon* for Arkwright Club; *B. L. Glover* for Ash Grove Lime & Portland Cement Company;

[1] This report embraces No. 10900, National Industrial Traffic League *v.* Director General, Aberdeen & Rockfish Railway, et al.

T. T. Harkrade for American Tobacco Company; *C. L. Hilleary* for F. W. Woolworth Company; *J. A. Hoffman* for American Manufacturing Company; *Stanley B. Houck* for Retail Coal Merchants' Association, Interstate Commerce & Trade Service, Incorporated, Northwestern Traffic & Service Bureau, Incorporated, Illinois-Wisconsin Retail Coal Merchants' Association and American Wholesale Coal Association; *R. G. Kreitler* for Rubber Association of America, Incorporated, and Goodyear Tire & Rubber Company; *W. C. Mitchell* for Central Leather Company; *T. B. Radcliffe* for Procter & Gamble Company; *Herbert Thompson* for Linde Air Products Company, Prest-O-Lite Company, Incorporated, and National Carbon Company; *Clifford Thorne* by *Charles H. Farrell* for National Wholesale Grocers' Association of the United States; *G. Van Wormer* for N. R. Allen's Sons Company.

R. V. Fletcher for Director General of Railroads; *O. W. Dynes, M. M. Joyce*, and *J. L. Coleman* for Director General of Railroads and defendant carriers under federal control.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

These cases were heard and argued together and will be disposed of in one report. They bring in issue the construction, reasonableness, and propriety of certain bill-of-lading provisions with respect to loss-and-damage claims.

The bills of lading adopted by defendants contain the following provisions concerning claims for loss or damage:

> Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; *and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.*

The italicized portion of the above provisions was inserted following the enactment by Congress on March 4, 1915, of the first Cummins amendment, which provides that:

> It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however*, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

The uniform bill of lading containing this restriction as to the period within which suit shall be instituted has been carried in the western classification since August 16, 1916, and in the official classification since June 1, 1916. The standard bill of lading which, generally speaking, is used by the carriers in southern classification territory carries similar provisions, but as a rule the terms thereof are not filed with this Commission as a tariff publication or rate schedule.

The complaint in No. 10696, filed by Jacob E. Decker & Sons, alleges that loss-and-damage claims on specified shipments forwarded between May, 1916, and February, 1917, although seasonably filed with the carriers, were not declined until after the expiration of the two-year-and-one-day period when they were declined solely on the ground that suit had not been instituted within the period prescribed in the bill of lading and that the claims therefore were not collectible. It is alleged that the provision in the bill of lading with respect to the period within which suit shall be brought was and is unjust and unreasonable in violation of section 1 of the act, particularly in so far as it related to the specified claims, and that, under a proper construction of the bill-of-lading provisions, the defendants were not prohibited, as claimed by them, from paying these claims if meritorious.

The complaint in No. 10900, filed by the National Industrial Traffic League in behalf of its various members, is similar in scope, except that it names practically all carriers in the United States as parties defendant, whether under federal control or otherwise, and that it also alleges that the practice of defendants in paying, after the expiration of the two-year-and-one-day period, some claims of some shippers and refusing to pay other claims of other shippers was and is unjustly discriminatory, and unduly prejudicial in violation of section 3 of the act. Intervening petitions in support of the allegations of the complaints were filed by numerous interested shippers. The term complainants as hereinafter used will be understood as including interveners.

Prior to the hearing, a motion was filed by the defendant carriers in No. 10696 to dismiss the complaint on the ground that we have no jurisdiction over claims for property loss and damage, and the defendant carriers in both cases, on brief and argument, advance a similar contention. For reasons stated in *Bills of Lading*, 52 I. C. C., 671, we entertain no doubt of our jurisdiction over the subject matter of these complaints which, as we understand it, do not extend to a request for an award of damages on account of loss-and-damage claims, but merely ask that we construe and pass upon the reasonableness and propriety of defendants' bill-of-lading provisions with respect to such claims. Claims for loss and damage which have

accrued subsequent to federal control have not as yet been affected by the two-year-and-one-day period, but a similar situation will shortly arise with respect to such claims, and it is stated that the Director General is desirous of having the benefit of our views on the issues presented.

For some time after the two-year-and-one-day clause became operative, the carriers generally, while enforcing the condition in the bill of lading as to the period within which claims should be filed with them, paid such claims, if found to be meritorious, without regard to how long a period had elapsed after the filing, payment being made after their investigation was completed, even though more than two years and one day had elapsed from the date of delivery of the shipment and no suit had been instituted within that period. In the latter part of 1918 some of the carriers took the position that the two-year-and-one-day limitation for instituting suits was a valid defense, and that they could not lawfully waive that defense and pay claims as to which no suit had been brought within that period, even though the claims were meritorious and even though the delay in disposing of the claims was due to the fault of the carrier. Other carriers, however, continued to pay such claims as before. This situation obtained until about July 22, 1919, on which date the general solicitor of the United States Railroad Administration issued to regional directors the following circular:

> It appears that on some railroads claims for loss and damage, upon which suits have not been brought before the expiration of the two years and one day limitation in the bill of lading, are being paid by Freight Claim Agents, while on other railroads the payment of such claims is being declined on the ground that same can not legally be paid.
>
> The question as to whether or not such claims may lawfully be paid is now pending before the Interstate Commerce Commission. In order to secure uniformity of practice over all Federal controlled lines, and to maintain the status quo pending the decision of the Interstate Commerce Commission, please instruct all General Solicitors and Freight Claim Agents to withhold payment pending such decision.
>
> Should the decision of the Commission be favorable to the payment of such claims, it will be the policy of the Administration, during a limited period thereafter, to pay all meritorious claims of this kind, provided the consent of the Railroad corporation may be secured.

It is stated that following the issuance of that circular no such claims have been paid on account of carriers under federal control where the shippers have permitted the two-year-and-one-day period to elapse without instituting suit, except under certain exceptional circumstances which are alleged not to have constituted an actual deviation from the general rule. Apparently the same general policy has been adopted by the nonfederal-controlled lines.

The first question presented is whether the carriers are prohibited under the terms of the bill of lading from paying meritorious claims

which have been presented to them in due season where the shippers, pending the final disposition of these claims by the carriers, have permitted two years and one day to elapse without instituting suit.

Section 10 of the uniform bill of lading reads as follows:

> Any alteration, addition, or erasure in this bill of lading, which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Complainants urge that the language used in this section permits a waiver of any of the terms or conditions of the bill of lading, including the condition that suit must be brought within two years and one day, and that the carriers have in legal effect waived the two-year-and-one-day period by the circumstance of having paid certain claims after more than two years and one day had elapsed, although suit had not been instituted. We are not impressed with this contention. This section is in strict conformity with the requirements of the bills of lading act, 39 Stat. L., 538. It obviously refers only to those provisions which are peculiar to a given bill of lading and which are subject to alteration, addition, or erasure, such as the description of the property, routing, etc., and does not authorize a waiver of those uniform provisions which are incorporated in the carriers' published tariffs and are presumed to be a part of the transportation contract, and, as such, binding upon both carrier and shipper.

But we do not construe the limitations in the bill of lading as prohibiting the payment after two years and one day, of meritorious claims if seasonably filed. In support of the contrary view defendants rely principally upon the decisions of the Supreme Court in *Phillips* v. *Grand Trunk Ry.*, 236 U. S., 662, and in *Georgia, Fla. & Ala. Ry.* v. *Blish Co.*, 241 U. S., 190, and cases cited therein. The question in the *Phillips Case* was whether the provision in section 16 of the act to regulate commerce, that all complaints for the recovery of damages must be filed with this Commission within two years, was a bar to an action in court for reparation. The Supreme Court held that under such a statute, which indicated its purpose to prevent suits on delayed claims, the failure to assert the right to recovery within the prescribed period not only barred the remedy but destroyed the liability, and that the two-year limitation applied to suits in court as well as to complaints filed with this Commission. The court said:

> The obligation of the carrier to adhere to the legal rate, to refund only what is permitted by law and to treat all shippers alike would have made it illegal for the carriers, either by silence or by express waiver, to preserve to the Phillips Company a right of action which the statute required should be asserted within a fixed period. * * * to

permit a railroad company to plead the statute of limitations as against some and to waive it as against others would be to prefer some and discriminate against others in violation of the terms of the Commerce Act which forbids all devices by which such results may be accomplished. The prohibitions of the statute against unjust discrimination relate not only to inequality of charges and inequality of facilities, but also to the giving of preferences by means of consent judgments or the waiver of defenses open to the carrier. The Railroad Company therefore was bound to claim the benefit of the statute here and could do so here by general demurrer. For when it appeared that the complaint had not been filed within the time required by the statute it was evident, as matter of law, that the plaintiff had no cause of action.

In the *Blish Case*, cited with approval in *Texas & Pac. Ry. Co.* v. *Leatherwood*, 250 U. S., 478, the court dealt with the four months' (now six months') clause of the bill of lading and said, among other things:

But the parties could not waive the terms of the contract under which the shipment was made pursuant to the Federal Act; nor could the carrier by its conduct give the shipper the right to ignore these terms which were applicable to that conduct and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations. A different view would antagonize the plain policy of the Act and open the door to the very abuses at which the Act was aimed. *Chi. & Alt. R. R.* v. *Kirby*, 225 U. S. 153, 166; *Kansas Southern Ry.* v. *Carl, supra; A., T. & S. F. Ry.* v. *Robinson*, 233 U. S. 173, 181; *Southern Ry.* v. *Prescott, supra.* We are not concerned in the present case with any question save as to the applicability of the provision, and its validity, and as we find it to be both applicable and valid, effect must be given to it.

While these cases are undoubtedly authority for the proposition that limitations in the bill of lading must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment above quoted do not evidence any intent on the part of Congress to erect a statute of limitations barring the payment of seasonably filed claims after any given period. These provisions merely prescribe a minimum period to be provided by the carriers for filing claims and a minimum period for instituting suit. Nor do the bill-of-lading provisions based on that amendment evidence any such intent. The bill of lading provides, first, that as a condition precedent to recovery certain claims must be filed within a fixed period, and, second, that suits, whether on account of the above claims or on account of claims not required to be filed with the carriers, shall be instituted within two years and one day. One of the purposes of these provisions is to facilitate prompt investigation of claims and that the carriers may not be required to defend suits brought after the expiration of the two-year-and-one-day period. The bill of lading does not provide, however, that the filing of suit shall be a further condition precedent to the consideration upon its merits or the payment of a valid claim seasonably filed with the carrier. Obviously where the carriers pay such claims, they must avoid unjust

discrimination in doing so, but the mere act of adjusting a claim after two years and one day, where the carrier had not concluded its investigation within that period, can not fairly be regarded, under the bill-of-lading provisions above quoted, as a waiver of defenses open to it. To hold otherwise is to say that where the consideration of a claim by a carrier is either designedly or unavoidably delayed until after the two-year-and-one-day period all liability of the carrier is destroyed notwithstanding the circumstance that the claim may have been seasonably filed with the carrier and that the shipper may have been led to believe that it would be adjusted, a construction which finds no sanction in the language actually used and which is clearly contrary to the spirit of the provisions and of the act of Congress upon which they are based. The purpose of the limitation with respect to filing suit is not that the carrier may escape liability but that if called upon to defend a suit the suit must be instituted within the period specified. Thus, in *McClure* v. *U. S.*, 19 C. C., 18, 25, the United States Court of Claims, in construing a statute which provided that every claim against the United States cognizable by that court should be forever barred unless petition was filed in the court within six years after the claim first accrued, said:

> When, therefore, it [Congress] provided that "every claim cognizable by the Court of Claims shall be forever barred, unless the petition * * * be filed in the Court * * * within six years after the claim first accrues," it meant barred from the general jurisdiction of the Court to enter judgment against the United States, and not absolutely barred from consideration everywhere, and especially not from examination and settlement in the departments where claims were and still are mostly settled. Such was the interpretation practically adopted immediately on the passage of the act, and continued without objection to the present time in the departments. Claims have uniformly been taken up there, audited, adjusted and settled without reference to the bar enacted in the Court of Claims act. That interpretation has been sanctioned by this Court and by the Supreme Court. Where cases have been transmitted to this Court under the provisions of Revised Statutes, Section 1063, the Court has held that the statute of limitations did not apply if the cases were such as the department might have examined and settled, although they were barred from consideration by the Court upon the voluntary petition of the claimants. Winnisimmet Co. Case 12 C., Cla. R., 319; Lippitt's Case, 14 id., 148; Green's Case, 18 id. 93.

The remaining issues relate to the reasonableness and propriety of the bill-of-lading provisions. It is urged that the shipper by filing suit may always avoid the effect of a protracted inquiry into claims by the carrier. Complainants reply that the amount involved in many of these claims is so small that a suit would not be justified and that from a practical as well as an equitable standpoint, and in the interests of the carrier as well as the shipper, the shipper ought not to be required to incur the expense and go through the formal procedure of instituting a suit which the carrier has no intention of defending or to which in fact it may have no defense. The right of a carrier to re-

quire reasonable notice of claims against it is well recognized. Where a shipper has complied with the carrier's requirements in this respect by duly filing his claim, we think he is entitled to a reasonable period after the declination of the claim within which to institute suit if he so desires. We are of opinion that the present bill-of-lading provisions are unreasonable in that they do not accord the shipper that right where the carrier fails to take prompt action in adjusting the claim Defendants call attention to the practice of some shippers of insisting that claims which have once been definitely declined be repeatedly reopened for further consideration. We are of opinion that defendants may reasonably and properly provide in this respect that the period prescribed within which suit shall be instituted after the declination of the claim shall date from the definite declination in writing of the claim.

Numerous claim statements are of record which support, in a general way, the allegations of the complaints. Defendants, while conceding that prior to July 22, 1919, the practice of the several carriers under federal control varied, urge that no one carrier is shown to have acted inconsistently during any given period of time in respect of the claims it paid and those it declined, and that no such carrier is shown to have waived the two-year-and-one-day limitation as to the valid claim of one shipper while interposing that limitation as to an equally valid claim of another shipper, and therefore contend that no unlawful discrimination has been shown. Even assuming the situation to be as above outlined, there was clearly an unlawful discrimination as between shippers whose claims were paid by or on account of an individual carrier prior to July 22, 1919, and other shippers whose like claims were not paid subsequent to that date. Furthermore, this contention of defendants ignores the fact that while, on shipments moving under through bills of lading, the initial carrier is liable for the full amount of loss or damage, the connecting carriers are not thereby relieved of liability; and the initial carrier, although uniformly declining to pay claims as to which suit has not been instituted within the two-year-and-one-day period, may nevertheless become an effective instrument of discrimination by reason of the fact that during the same period similar claims may be paid by its connecting carriers. We deem it unnecessary to pass upon the question of whether or not actual discrimination was practiced in the many specific instances brought to our attention. It is sufficient to state that in our opinion the provisions in question were and are clearly unjustly discriminatory and unduly prejudicial, and as to past or future practices we need do no more than to remind the defendants of the obligation and duty imposed upon them by the act to avoid unjust discrimination and undue prejudice. Apparently there is no disposition on the part of the

carriers as a whole to decline payment of meritorious claims of the character here in question if they can lawfully do so. Our conclusions herein clearly indicate the view we entertain on this point.

We find that the bill-of-lading provisions in question were and are unreasonable, unjustly discriminatory, and unduly prejudicial; and that reasonable and nondiscriminatory and nonprejudicial provisions to be applied for the future in lieu of that portion of the provisions italicized above would be substantially as follows:

> Suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed; *Provided, however*, That where claims for loss, damage, or delay have been duly filed with the carrier and such claims have not been definitely declined in writing by the carrier before the beginning of the last six months of the two-year-and-one-day period, then suit thereon may be filed within six months from the date the claims are definitely declined in writing by the carrier, but not after. Where claims for loss, damage, or delay are not filed, or suits are not instituted thereon, in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

Instances have been brought to our attention where a carrier in declining claims seasonably filed with it, on the ground that the shipper had permitted two years and one day to elapse without instituting suit, has advised the claimant that it was prohibited from paying such claims by ruling of this Commission. We desire here to state that no such ruling has ever been made by us. In *Bills of Lading*, *supra*, we said, in referring to the present bill-of-lading provisions with respect to the time of filing claims and instituting suit, that these seemed to be reasonable provisions and that so far as we were advised they were not objected to by any of the shippers. That proceeding, however, was submitted before the situation which developed in these complaints arose. The conclusions reached herein will, of course, necessitate modification of our order in *Bills of Lading*, *supra*, when and if it shall take effect. No order for the future will be entered at this time but defendants will be expected to modify their bill-of-lading provisions in accordance with our conclusions herein. If this is not done within 60 days, complainants may bring the matter to our attention for such further action as may be deemed necessary.

No. 10595.

INLAND STEEL COMPANY ET AL.

v.

DIRECTOR GENERAL OF RAILROADS.

Submitted October 21, 1919. Decided November 20, 1919.

Export rate of 60 cents per 100 pounds on iron and steel articles from Chicago, Ill., to Pacific coast ports not found to be unreasonable or unduly prejudicial. Complaint dismissed.

Luther M. Walter for complainants.

W. E. Long for Northwestern Barb Wire Company; *Colin C. H. Fyffe* for Illinois Manufacturers Association; *C. L. Lingo* for Inland Steel Company.

B. L. Verner for National Rolling Mill Company and others, interveners.

James L. Coleman and *T. J. Norton* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND DANIELS.

Complainants are manufacturers of iron and steel articles at Chicago, Ill., and points taking the Chicago rates, and associations of merchants and manufacturers of Chicago and other points in the state of Illinois. They allege that the rates on iron and steel articles from Chicago, Ill., to Pacific coast ports, for export, are unreasonable and unduly preferential of Pittsburgh, Pa., in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. Rates hereinafter stated are in cents per 100 pounds unless otherwise stated.

The complaint grows out of the establishment on April 21, 1919, of a rate of 60 cents on iron and steel articles from both Chicago and Pittsburgh to Pacific coast ports, for export. Complainants do not question the intrinsic reasonableness of the 60-cent rate. Their sole contention is that the rate from Chicago should be at least 12.5 cents lower than the rate from Pittsburgh, and they would be content if the Pittsburgh rate was increased to 72.5 cents.

Manufacturers located at Terre Haute and Vincennes, Ind., intervened and they also ask for a rate 12.5 cents lower than the rate contemporaneously maintained from Pittsburgh.

Complainants show that the production of iron and steel in the Chicago district is the second largest in the United States; that the mills in this district produce practically all forms of iron and steel articles manufactured in the Pittsburgh district and related points. Iron and steel articles are usually sold on what is commonly known as the Pittsburgh basis, and the products of complainants' mills are sold and distributed in competition with similar material produced in the Pittsburgh district.

The 60-cent rate was made applicable from all producing points from the Atlantic seaboard to and including Colorado common points. On May 27, 1919, the rate from Colorado common points was reduced to 50 cents and the rate from Midvale, Utah, to 40 cents.

The distance from Chicago to the Pacific coast ports is 468 miles less than the distance from Pittsburgh, and approximately 900 miles less than the distance from New York. Complainants urge that for many years the rates on iron and steel articles, both export and domestic, to Pacific coast ports have been higher from Pittsburgh than from Chicago; that for the additional distance the cost of service from Pittsburgh is greater and the return correspondingly less; that as the distance from Minnequa, Colo., to San Francisco is 819 miles less than from Chicago, and the rate is 10 cents less, for the shorter distance from Chicago than from Pittsburgh the rate from Chicago should be 12.5 cents less than from Pittsburgh.

They further urge that large amounts have been expended in establishing plants in the Chicago district in reliance on the long-existing relationship of rates, and that commercial conditions which were based on this relationship have been disrupted.

For several years, while railroads were under private control, and until June 25, 1918, export rates on iron and steel articles to Pacific coast ports were higher from Pittsburgh than from Chicago. From June 13, 1915, to April 2, 1917, the rates on some of these articles were 30 cents from Chicago and 42 cents from Pittsburgh. On that date under our finding in *Western Export Iron and Steel Case*, 43 I. C. C., 129, the rates were made 40 cents from Chicago and 45 cents from Pittsburgh. These rates remained in effect until June 25, 1918, when all export rates to both Atlantic and Pacific coast ports were cancelled as it was thought that, due to the disrupted conditions of ocean transportation, whatever export tonnage there was could move on domestic rates. The domestic rates on iron and steel articles to Pacific coast ports were $1.125 from Chicago and $1.25 from Pittsburgh. It developed, however, that on some of the more important commodities export rates would be necessary if the ocean service via Pacific coast ports were to continue and relief afforded to congested north Atlantic ports. Export rates on several commodities,

including iron and steel articles, were therefore published to Pacific coast ports, effective July 1, 1918, the rates on iron and steel articles being 60 cents from Colorado common points, 75 cents from Chicago, and 85 cents from Pittsburgh. Owing to uncertain conditions of ocean transportation it was impossible to apply the general principle of approximate equalization of charges on export traffic via the Atlantic and Pacific coast ports, but after the signing of the armistice there was a gradual release of shipping and ocean rates became more normal. The difference in ocean rates from Atlantic and Pacific ports became less, and the rates published no longer served the purpose of diverting tonnage from the congested Atlantic ports.

The rate from Pittsburgh to New York was 27 cents and the ocean rate published by the United States Shipping Board from New York to the Orient was $20 per gross ton or 89.3 cents per 100 pounds, making a total charge of $1.163. The ocean rate published by the United States Shipping Board from Pacific ports to the Orient was $12 per net ton or 60 cents per 100 pounds. In order to equalize the charges via the Atlantic and Pacific ports therefore a rate of 56.3 cents from Pittsburgh to Pacific ports was necessary, and a 60-cent rate was published to approximately equalize these routes. Although the rate from Chicago to New York was 45 cents, which, in connection with the ocean rate of 89.3 cents to the Orient, made a total of $1.343, the rate from Chicago to the Pacific ports was made the same as from Pittsburgh, thus enabling Chicago manufacturers to meet the competition of Pittsburgh manufacturers.

For defendant it is stated that the export rates were not made upon any consideration of reasonableness of the rates in and of themselves, and length of haul and cost of transportation were not controlling factors, but that the rates were established to effect a better distribution of export tonnnage between ports. It also appears that the cost of production in Colorado is higher than in the east and unless relief was afforded, Colorado shippers would have to abandon the effort to engage in foreign commerce, and complainants admit that competition with Colorado is small.

Complainants urged that if Pittsburgh, by reason of its location and lower rates to the Atlantic seaboard, is to have an advantage of $3.80 per ton in rates for export to Europe, Africa, and South America, Chicago by reason of its location is entitled to an advantage in rates on export traffic to the Orient. This contention, however, overlooks the fact that the rate from Pittsburgh to the Pacific coast is made to enable competition with the route through the Atlantic seaboard and if low rates were not made over this route the movement from Pittsburgh and from Chicago, if any, would be through the Atlantic ports.

The conditions at the port of New York have been considerably improved, and complainants urge that as relief from congested conditions is no longer necessary, the difference in rates, Pittsburgh higher than Chicago, should be restored. Defendants urge that larger movement through Atlantic ports would result in the ships used in this export business bringing through such ports oriental trade which might otherwise come through Pacific coast ports.

Defendants show that, as indicated by shipping permits for export traffic through Pacific coast ports, issued by the government, the movement from Chicago district from January 1, 1918, to June 30, 1918, under a 5-cent difference in rates, was 33⅓ per cent of the total movement from Pennsylvania and Indiana-Illinois points; from July 1, 1918, to April 20, 1919, under a 10-cent differential, 35.7 per cent, and from April 21, 1919, to May 31, 1919, with no difference in rates, 37.9 per cent. The importance of this showing, however, is questioned by complainants because of movement on contracts made prior to the change in rates.

If the rate from Pittsburgh to Pacific ports was increased, Pittsburgh still has the benefit of the rate via the Atlantic ports, and if the rate from Chicago should be made without relation to the rate from Pittsburgh but such as to enable competition through Atlantic ports, it would approximate 75 cents. It is difficult to see wherein Chicago would materially benefit by the establishment of a higher rate from Pittsburgh, when Pittsburgh mills would still have the benefit of the route through Atlantic ports at lower rates.

MEYER, *Commissioner:*

Upon substantially the foregoing statement of facts, the examiner who heard the testimony recommended the finding that the rates assailed had not been shown to be unduly preferential of Pittsburgh, unduly prejudicial of Chicago, or otherwise unlawful, and that the complaint should be dismissed.

Complainants filed exceptions to the conclusion reached by the examiner in the proposed report.

They urged that the blanketing of the rates gives to the United States Steel Corporation, having plants located in the Chicago district and in the east an undue advantage in that contracts may be made and orders filled from whatever plant may be best situated with respect to the traffic. Such an advantage is only natural to an industry having plants located in two or more territories, and under the facts as shown in the record, whatever advantage may accrue to such an industry results from its location nearer to the Atlantic seaboard, via which the lowest available basis of charges is applicable.

Reference is made to the difference in rates on iron and steel articles of 10 cents from Pittsburgh higher than from Chicago to Pacific coast ports, authorized in *Rates on Iron and Steel Articles*, 38 I. C. C., 237. The denial of authority to the carriers to establish a rate of 55 cents from Pittsburgh, the same as from Chicago previously established, and to maintain higher rates at intermediate points, was based upon the difference in conditions of water competition through the Panama Canal which existed at that time as compared with the conditions as they existed when the 55-cent rate was established from Chicago, and was not determinative of what the decision might have been had the establishment of rates from Pittsburgh and Chicago been contemporaneous.

It is urged for complainants that a manufacturer of barbed wire at Chicago, buying rods for its manufacture in the Pittsburgh market and paying the freight rate from Pittsburgh to Chicago, is placed at considerable disadvantage as compared with the Pittsburgh manufacturer buying rods in the Pittsburgh district. The price of iron and steel articles generally in the Chicago market is based on the Pittsburgh price plus the rates from Pittsburgh. The disadvantage of this manufacturer in selling his goods in the Orient is due to the proximity of the Pittsburgh shipper to the Atlantic seaboard.

The distance from Chicago to its nearest port from which ocean routes to the Orient operate is considerably greater than the distance from Pittsburgh to its nearest port, and whatever disadvantage industries at Chicago may be operating under is not attributable to the defendant in this case, and in our view of the situation the cancellation or increase of the rate from Pittsburgh to the Pacific coast ports would not remove such disadvantage.

Upon the whole record we are of opinion and find that the rates assailed have not been shown to be unreasonable, or unduly prejudicial.

An order will be entered dismissing the complaint.

No. 10571.

J. F. ANDERSON LUMBER COMPANY

v.

DIRECTOR GENERAL, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ET AL.

Submitted July 1, 1919. Decided December 10, 1919.

Rate on fuel wood in carloads from Hermansville, Mich., to Mitchell, S. Dak., found unlawful and unreasonable. Measure of reasonable maximum rate prescribed and reparation awarded.

Stanley B. Houck for complainant.
Fred G. Wright for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the lumber business at Mitchell, S. Dak., alleges, by its complaint seasonably filed, that the rate charged by defendants on a carload of fuel wood shipped February 19, 1917, from Hermansville, Mich., to Mitchell, S. Dak., was, and that the present rate is, unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. Reparation and the establishment of a reasonable rate for the future are asked. Rates will be stated in cents per 100 pounds.

Hermansville is located on the Chicago & North Western and the Minneapolis, St. Paul & Sault Ste. Marie railways, hereinafter called the North Western and the Soo line, respectively. The shipment weighed 49,600 pounds, was routed in the bill of lading "Omaha," and moved over the North Western, through Oshkosh, Clyman, and La Crosse, Wis., to Mankato, Minn., and the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, to destination, a distance of 735 miles. Charges were collected in the sum of $143.84, at a joint class E rate of 29 cents legally applicable, governed by the western classification. A check of the tariffs develops that a combination of 17 cents was in effect over the route of movement, composed of distance commodity rates of 6.5 cents to La Crosse and 10.5 cents beyond. This departure from the provisions of

the fourth section of the act to regulate commerce was created subsequent to August 17, 1910, and being unauthorized was and is unlawful.

The complainant contends that the rate charged was unreasonable to the extent that it exceeded a combination commodity rate on fuel wood of 15.5 cents based on Minnesota Transfer, contemporaneously applicable via the shorter route of the Soo line and the Omaha, 616 miles. This was the customary route from and to these points, and it appears that the shipper's failure to send the shipment over that route was due to the fact that no car was available. The defendants do not admit that the rate charged was unreasonable, but apparently were willing to pay reparation upon the basis of a combination of 20 cents in effect via a shorter route over defendants' lines by way of St. Paul, Minn.

On June 25, 1918, the rates on fuel wood from and to the points named were increased 25 per cent, but not to exceed 5 cents per 100 pounds, under General Order No. 28 of the Director General of Railroads, but this increase is not attacked.

We find that the rate charged was unlawful and unreasonable, and that the present rate is and for the future will be unreasonable to the extent that it exceeded or may exceed the aggregate of intermediate rates to and beyond La Crosse contemporaneously in effect over the route of movement; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $59.52, with interest from March 17, 1917.

An appropriate order will be entered.

No. 8406 (Sub-No. 8).[1]

NATIONAL TUBE COMPANY

v.

LAKE TERMINAL RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted November 14, 1919. Decided December 8, 1919.

1. Conclusions reached in *The Lake Terminal Case*, 50 I. C. C., 489, modified in the light of the further hearing and present record.
2. The Lake Terminal Railroad Company found to be, and to have been at all times covered by these cases, a common carrier subject to the act to regulate commerce, lawfully entitled to receive divisions of joint rates or absorptions of switching charges under appropriate tariffs from its trunk line connections, such divisions or absorptions to be reasonable.
3. Reparation awarded to complainants on interstate carload shipments made between points on the Lake Terminal and interstate points during the period from April 1, 1914, to April 14, 1915, during which complainants paid the charge of the Lake Terminal in addition to the rates prevailing on like shipments to and from points in the same rate district.

Charles MacVeagh, *C. A. Severance*, and *Charles S. Belsterling* for complainants.

James R. Garfield for Lake Terminal Railroad Company.

George Stuart Patterson, *Clyde Brown*, *T. H. Burgess*, and *W. A. Parker* for Director General of Railroads and defendant trunk line railroads.

R. V. Fletcher for Director General of Railroads.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, *Commissioner:*

The original report in these proceedings is *The Lake Terminal Case*, 50 I. C. C., 489. It was there found that complaints seeking reparation on carload shipments between points on the Lake Terminal Railroad Company, hereinafter called the Lake Terminal, and various interstate points during the period from April 1, 1914, to, but not including, April 14, 1915, when such shipments were charged the local rates of the Lake Terminal in addition to the prevailing

[1] This report embraces No. 8406 (Sub-No. 9), Same *v.* Same; No. 8406 (Sub-No. 10), Same *v.* Same; No 8406 (Sub-No. 11), Same *v.* Same; No. 8406 (Sub-No. 12), Same *v.* Same; No. 8406 (Sub-No. 20), Carnegie Steel Company *v.* Same; No. 8406 (Sub-No. 21), Same *v.* Same; No. 8406 (Sub-No. 22), Same *v.* Same; and No. 8406 (Sub-No. 23), Same *v.* Same.

through rates to or from the Cleveland-Lorain rate district, should be dismissed for the reason that the service performed by the Lake Terminal was a plant service and not a service of transportation which could be included in and paid for out of the line-haul rates. An order was entered on June 11, 1918, by which the defendants other than the Lake Terminal were "notified and required to cease and desist, on or before August 15, 1918, and thereafter to abstain, from making any allowances or divisions to The Lake Terminal Railroad Company in respect to or for the plant service described in said report."

Injunction proceedings were instituted by interested parties in the district court of the United States for the northern district of Ohio, eastern division, to test the validity of this order, during the pendency of which the effective date of the order was extended from time to time. On December 13, 1918, the court filed its opinion and upon consideration thereof and of the record in these cases we vacated and set aside on December 21, 1918, the portions of our order of June 11, 1918, which dealt with "allowances or divisions" for the future. Thereupon the court entered its final decree dismissing the proceedings before it without prejudice to the rights of the parties before the Commission or elsewhere.

On March 21, 1919, the application of complainants, National Tube Company, a corporation of Ohio, hereinafter called the tube company, and the Carnegie Steel Company, for rehearing and reargument was granted, and leave was given the Lake Terminal to file a cross petition.

The original issues raised by the complaints included the determination, if reparation should be awarded, of the divisions or switching absorptions which it would have been reasonable for the Lake Terminal to receive during the 12½-months period of nonabsorption. The cross petition of the Lake Terminal raises certain additional issues, namely, whether or not—

(*a*) the Lake Terminal is a common carrier;

(*b*) services performed by the Lake Terminal, including the placement of cars at customary points for loading and unloading, constitute a transportation service for which it is entitled to reasonable compensation in the form of a division or switching absorption out of the through line-haul rates;

(*c*) defendant trunk lines should be required (1) to continue to accord to receivers and shippers of freight served by the Lake Terminal the prevailing Cleveland-Lorain district rates, and (2) to pay and accord the Lake Terminal out of the Cleveland-Lorain district rates reasonable compensation in the form of divisions or switching absorptions for the services performed by it; and

(*d*) defendant trunk lines should be required to pay to the Lake Terminal reparation in an amount representing the difference between the divisions or switching absorptions paid to it since March 15, 1917, and the amount of divisions or switching absorptions which we may find to have been fair, just, and reasonable, with interest.

In the original report the majority opinion was based largely upon the record in No. 4181, *Industrial Railways Case.* The question was raised as to whether or not that record was properly a part of the record in these proceedings. At the further hearing the presiding examiner ruled, without objection, that the record in No. 4181 was not a part of this record, but that the parties might introduce portions of it as exhibits, in accordance with our rule of practice governing documentary evidence, and the portions so introduced were made part of this record. It was agreed by the parties, subject to check, that there was no dispute about the amount of payment and the fact of payment by complainants of the transportation charges, including the switching charges of the Lake Terminal during the nonabsorption period.

As the disposition of these cases turns largely upon whether or not the Lake Terminal was and is a common carrier subject to the act to regulate commerce, the status of that road will first be considered.

The line of the Lake Terminal extends from Lorain to South Lorain, Ohio, and consist of 41.38 miles of standard-gauge track, of which 13.484 miles is main track and 27.896 miles spurs and sidings. It owns all of this track and the right of way on which it is laid. On January 1, 1914, the Lake Terminal owned and operated 12.07 miles of main track and 21 miles of spurs and sidings. Its equipment consists of 20 locomotives, 2 passenger cars, 341 freight cars, and 3 company-service cars. One hundred and three of the freight cars are interchanged with connecting trunk lines.

Since January 1, 1914, the shares of capital stock of the Lake Terminal have been held by the United States Steel Corporation. Complainants are subsidiaries of the steel corporation. A number of the officers of the Lake Terminal are also officers of and paid by the National Tube Company, a corporation of New Jersey, distinct from the tube company, but, like it, a subsidiary of the United States Steel Corporation. The operation of the road is conducted by a superintendent and other employees who have no connection with any other company. The tube company does not in any way interfere with or control the management or operation of the road.

The book value of the various classes of property, including materials and supplies, owned by the Lake Terminal on December 31, 1918, was $3,687,779.56, which represents original cost. The Lake Terminal performs no service except that which is covered by its published tariffs and may be required of it as a common carrier.

It was valued for the trunk lines by a committee of engineers in 1908 in connection with negotiations for divisions or absorptions. The valuation, with additions and betterments and less depreciation, amounted to $1,568,553 on June 30, 1911, and to $1,740,886.63 on

December 31, 1918. This valuation has not been tested by us and should not be regarded as indicative of the value which we may find under section 19a of the act.

On January 1, 1914, it operated over spur tracks owned by the tube company on which freight was loaded and unloaded by the tube company. These tracks aggregated 29 miles and were maintained by the Lake Terminal. The spurs are now maintained as well as owned by the tube company, and aggregate 38 miles. Small portions are used for placing cars in interchange service. Since January 1, 1914, additional yards have been established for interchange with the Lorain, Ashland & Southern, a part of the Pennsylvania Railroad lines west. The Lake Terminal yard is on its own property, adjoining that of the tube company and outside the fence line of the latter.

The Lake Terminal's tracks and roadbed are in such condition that trunk line power and equipment could be operated over them with safety, and there are no curves which would interfere with such operation. Some of the locomotives used by the Lake Terminal are larger than those in general use by the trunk lines for similar work in the Cleveland-Lorain district. Both freight and passenger trains of connecting trunk lines have been detoured over the line of the Lake Terminal under the standard form of detour contract.

The Lake Terminal was organized and incorporated as a common-carrier railroad under the laws of Ohio in September, 1895. It is taxed as a common carrier by that state, and its earnings are taxed as revenue from transportation under the federal law. It complies with state and federal laws governing common carriers, is governed by the National Car Demurrage Rules and the Code of Car Service Rules, and is a member of a number of railroad associations. It conforms to the rules and regulations of the United States Railroad Administration, and makes such daily, weekly, and semimonthly reports as are required. The Lake Terminal pays its share for the maintenance of joint car inspectors and the Chief Joint Inspector. Outbound interchange traffic is weighed by it and the weights are accepted and used by the trunk lines.

The Lake Terminal collects demurrage from shippers in accordance with its published tariffs. It issues no bills of lading, but issues switching tickets and transfer slips. Bills of lading and waybills for outbound shipments are made out by a joint agent in the office of the Lake Terminal.

It files with us and with the Ohio commission its tariffs and annual reports and was held to be a common carrier by the Public Utilities Commission of Ohio. The order of the state commission required the trunk line defendants "to establish reasonable and just joint rates and through routes from points and places on complainant's line to points and places on defendants' lines, in the state of

Ohio, and to provide out of said joint rates proper and reasonable allowances to complainant for the transportation and switching service necessary to be performed by complainant in the movement of commodities * * *" and stated that the order could be complied with "by restoring, republishing, and refiling the tariffs" in effect immediately prior to the cancellation of the absorptions.

The connecting trunk line railroads are, at Lorain, the Baltimore & Ohio and the Pennsylvania, and at South Lorain, the New York, Chicago & St. Louis, the New York Central, and the Wheeling & Lake Erie. There are two junction points with each of the first two trunk lines named.

The four team tracks maintained by the Lake Terminal are on its own property, outside the plant inclosure of the tube company. A statement of record lists forty shippers not affiliated with the Lake Terminal for which that road switched interchange traffic during the year 1918. The number of cars switched aggregated 611. Of these 272 were for contractors engaged in certain construction for the Tube Company. In addition to the interchange traffic, 134 carloads of slag, ashes, and sand were switched from the tube company to consignees on the Lake Terminal's team tracks in South Lorain. An analysis of the traffic and revenues for the calendar year 1918 appears in the margin.[1]

	Number of tons.	Number of cars.	Amount of revenue.
Interchange service:			
(a) Between plants of controlling industry and junctions with connecting carriers	3,503,817	74,541	$273,185.31
(b) Between plants of affiliated industries and junctions with connecting carriers	None.		
(c) Between independent industries and junctions with connecting carriers	9,458	195	756.65
(d) Between team tracks or freight stations and junctions with connecting carriers	14,202	430	1,136.17
Plant and interplant service:			
(e) For controlling or affiliated industries			
(The Lake Terminal Railroad performs only interplant or local service)		160,139	480,417.00
(f) For independent industries	None.		
Local switching:			
(g) Between plants of controlling or affiliated industries and other industries, team tracks, or stations			
(Between plants of the National Tube Company and other industries, team tracks, or stations)		134	402.00
(h) Between independent industries	None.		
(i) Between team tracks or between freight stations	None.		
(j) Other local switching		42,167	70,577.00
Overhead switching:			
(k) Between trunk lines	73,263	1,599	5,596.50
(l) Between trunk lines and a public wharf or dock served by respondent	2,772,591	45,243	198,042.22
Less-than-carload traffic:			
(m) For the controlling or affiliated industries		518	518.00
(n) For other industries and the public	None.		
Other revenue:			
(o) Passenger revenue			1,380.00
(p) Mail revenue	None.		
(q) Express revenue	None.		
(r) Miscellaneous revenue divided between that received from controlling or affiliated industries and that received from the public	None.		

The record shows that operations for the five years from 1914 to 1918, inclusive, resulted in deficits in what is termed the "net corporate income" for four of the years; and in a deficit of $337,165.23 for the whole period.

The values assigned by the Lake Terminal to its railroad property and those assessed by the Ohio authorities for purposes of taxation are as follows for the years indicated:

Year.	Value assessed by Ohio authorities.	Value assigned by Lake Terminal.	Year.	Value assessed by Ohio authorities.	Value assigned by Lake Terminal.
1914	$1,923,370	$1,710,591.63	1917	$2,039,880	$1,897,091.77
1915	1,923,370	1,688,358.87	1918	1,866,210	1,890,183.59
1916	1,903,370	1,857,526.04			

In the past few years the cost of labor and materials has greatly increased. The Lake Terminal has made wage increases corresponding to those made by the trunk lines. The compensation of the Lake Terminal was not increased when the rates of the trunk lines were successively increased 5 per cent, 15 per cent, and 25 per cent under our decisions in *The Five Per Cent Case*, 32 I. C. C., 325, and *The Fifteen Per Cent Case*, 45 I. C. C., 303, and under General Order No. 28 of the Director General, respectively.

An exhibit was introduced showing the cost of service, apportioned between local switching and interchange switching on the engine-hour basis. According to this the cost of the interchange service and interest at 6 per cent per annum upon the valuation of the property used in that service, said to be based upon the formula in *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408, were as follows for the years indicated, stated in cents per ton of interchange traffic:

Year.	Total valuation interchange.	Interest at rate of 6 per cent on property valuation, cents per ton.	Operating expenses and taxes, cents per ton.	Total, cents per ton.
1914	$1,518,861.39	3.381	8.133	11.514
1915	1,526,182.91	2.249	6.176	8.425
1916	1,625,214.28	1.865	5.737	7.602
1917	1,687,976.23	2.206	10.407	12.613
1918	1,642,273.94	1.709	11.853	13.562

The decreased cost per ton in 1915 and 1916 as compared with 1914 was apparently due to a marked increase in interchange tonnage handled. The tonnage in 1917 fell somewhat below that handled in 1916, although greater than that for 1915; and the 1918 tonnage was considerably greater than in any previous year. The fluctuations shown illustrate the difficulty of attempting to determine

with precision in a case of this sort the charge necessary to yield any given return upon the value of railroad property, but the figures are helpful in connection with other data of record in determining the questions presented for decision.

The Lake Terminal's interchange switching for the tube company does not differ from that performed by it for independent shippers or from that which would be performed by the trunk lines if they served the tube company directly. Interchange is made with the trunk lines in their interchange yards, which are an appreciable distance beyond junctions with the Lake Terminal. There is considerable conflict in the testimony as to what proportion of the classification of loaded cars so interchanged is done by the Lake Terminal, but the evidence warrants a finding that the proportion is substantial. The average length of haul performed for the Lake Terminal to or from the interchange points is given as being from or to the—

	Miles.
Plants of the affiliated industries	4.36[1]
Plants of independent industries	2.4
Team tracks	3.0

For a period of 10 years or more, with the exception of the 12½-months period of nonabsorption, the Lake Terminal has been compensated by the trunk lines for the service in connection with interchange shipments, and this exception was confined to interstate shipments. Prior to April 1, 1914, the amounts received by the Lake Terminal per ton, net or gross as rated, were: On inbound coal and coke in carloads, 10 cents; on outbound shipments of steel, wrought pipe, and steel rails, 15 cents; and on iron ore, 10 cents.

Since April 14, 1915, the published charge of the Lake Terminal has been 8 cents per ton, net or gross as rated, on inbound and outbound interchange carload traffic, which has been absorbed by the trunk lines except that on ex-lake ore moving over the National dock at Lorain the trunk lines absorb 4 cents per ton, the remaining 4 cents being payable by the shipper in addition to the line-haul rate. Its published charge for plant switching and local switching is $3 per car; for reswitching $1.50 per car; and for switching between trunk lines $3.50 per car. Less-than-carload traffic is handled in trap cars at a published rate of 8 cents per ton, minimum $1 per car.

These charges are considerably less than those of the trunk lines for similar services in the same rate district. For example, the Baltimore & Ohio assesses 30 cents per ton for switching iron ore at Lorain, although the haul is appreciably less than that for which the Lake Terminal receives 8 cents.

[1] Over tracks of Lake Terminal, 3.35 miles; over trunk line tracks, 0.64 mile; and over plant tracks, 0.37 mile.

Illustrations are submitted showing what the proportion of the through charges accruing to the Lake Terminal would be if it were accorded divisions based upon a mileage prorate, using a constructive mileage of 25 miles for the Lake Terminal as the originating or delivering road. The divisions thus computed would range from 11 cents on iron ore to Pittsburgh, Pa., to 45 cents on wrought pipe to Buffalo, N. Y.

The charges for intraplant movements vary in the Cleveland-Lorain district. The River Terminal Railway charges $1.50 per car. The charge of the New York Central is 20 cents per ton, minimum weight 25 tons.

The Lake Terminal performs no service between points in the same mill, but switches between different mills of the tube company, charging the established rate therefor. This service is entirely intrastate and, in the absence of any unjust discrimination against or undue prejudice to interstate commerce or shippers, need not be considered by us. The tube company has a narrow-gauge industrial railway with about 14 miles of track, over which it operates 25 locomotives and 668 cars. These tracks cross those of the Lake Terminal at two points only. It also has one standard-gauge locomotive which is used for moving a ladle car containing hot metal from the cupolas to converters a short distance over its own tracks.

In the light of the further hearing and present record, our conclusions in *The Lake Terminal Case*, *supra*, must be modified.

Upon the record we are of opinion and find that the Lake Terminal is, and at all times covered by these cases has been, a common carrier subject to the act to regulate commerce, and may lawfully receive from its trunk line connections divisions of joint rates, or absorptions of switching charges under appropriate tariffs, such divisions or absorptions to be reasonable.

The tube company seeks reparation on inbound and outbound interstate shipments of coal, coke, wrought pipe, and other commodities, while the claims of the Carnegie Steel Company cover shipments of ex-lake iron ore moving over the National dock, owned by the tube company, at Lorain via the Lake Terminal and its connections to various interstate destinations. It is testified that the National dock is operated as a public dock and a printed schedule of charges, which does not appear to be filed with any federal or state authority, was introduced as an exhibit.

Except for the nonabsorption period of 12½ months covered by the reparation claims it has been the uniform custom of the trunk lines in the Cleveland-Lorain rate district to apply on iron and steel articles and the raw materials used in their manufacture the district rates to and from industries located therein, whether on industrial roads or trunk lines. The line-haul rate covered one spotting of the

car for loading, or unloading, as the case might be. During the nonabsorption period complainants were compelled to pay not only the district rates but also the charges of the Lake Terminal, although their competitors in the same rate district located on trunk lines paid only the district rate.

The tube company buys its raw materials in a competitive market and encounters keen competition in disposal of its product. It was unable to increase its selling price to include the switching charges of the Lake Terminal during the period when they were not absorbed by the trunk lines out of the district rates. The Carnegie Steel Company is in competition with others engaged in similar business and receiving ore shipped through ports from which the lower Lake Erie rates were charged, and was unable to increase its selling price to include the additional charge of the Lake Terminal during the period of nonabsorption. Both complainants paid and bore the transportation charges on these shipments, including the switching charges of the Lake Terminal, throughout that period.

Approximately 76 per cent of the outbound interchange tonnage consists of ex-lake iron ore passing over the National dock. On ore unloaded from vessels by the machinery and other facilities furnished at this dock a charge is made against the vessel of 10 cents per long ton for taking the ore from the hold to the rail of the vessel. The dockage charges in cents per long ton are—

DIRECT ORE: Handling charge vessel to car	6
DOCK ORE:	
Handling charge vessel to dock	16
Handling charge dock to car	10

These charges are not filed with us and are not in issue.

The unloading from vessels is done by four Hewlett machines of the clam-shell type which drop the ore into "skip" cars. The latter are of the drop-bottom type and, from points immediately above the Lake Terminal tracks, dump the ore into cars placed for that purpose by the Lake Terminal. The latter has nothing to do with the operation of the unloading machines or of the skip cars and the handling of the ore from vessel to trunk line interchange tracks is as distinct from the industrial operations of the tube company "as though the National Tube plant was not here at all." Some of the ore is transported for shippers who are not affiliated in any way with the Lake Terminal. The latter handles ex-lake ore from any consignor at the National dock. That dock is said to be operated now as a public dock, although at the time of our decision in the *Iron Ore Rate Cases*, 44 I. C. C., 368, it was represented to be a private dock.

In that report we found that as to shipments of ore handled over private docks the carriers might properly publish rates applicable

from the docks as such and not from the rail of the vessel. We also said, page 376:

We are of the opinion, and so find, that a reasonable rate on ore from the private docks served by short-line railroads that are entitled to receive allowances will be 4 cents per long ton higher than the line-haul rates herein prescribed to apply on shipments from the railroad docks.

The following extract from an exhibit introduced by complainants shows the district rates on wrought pipe as increased from time to time since 1904, representative destination points being used:

Wrought pipe, from Cleveland-Lorain district.

To—	Jan. 1, 1904.	June 1, 1907.	5 per cent Oct. 26, 1914.	15 per cent Sept 20, 1917.	25 per cent June 25, 1918.	Nov. 1, 1918.	Increase.	
							Cents.	Per cent.
Chicago	13.5	15	15.9	18.5	23	.....	9.5	70.3
Cincinnati	11	13	13.7	16.5	20.5	.....	9.5	86.4
Louisville	14.5	16	16.8	20.5	25.5	.....	11	75.9
Mississippi River	17.5	19.5	20.6	22.5	28	.....	10.5	60
Pittsburgh	9.5	10	10.5	14.5	18	.....	8.5	89.5
			Feb. 23, 1915.	Aug. 20, 1917.				
Baltimore	16	17.5	18.4	21	26.5	28	12	75
Boston	19.5	21	21.9	24.5	30.5	35.5	16	82.1
New York	17.5	19	19.9	22.5	28	32	14.5	82.9
Philadelphia	16.5	18	18.9	21.5	27	29.5	13	78.8

General rate increase on all traffic throughout the country during this period of fifteen years was 45 per cent, while the increases on wrought-pipe shipments ranged anywhere from 60 per cent to 89½ per cent, as shown in above table.

The exhibit makes a similar showing as to steel rails, but the percentage of increase is less, ranging from 35.7 per cent on shipments to Pittsburgh to 54.4 per cent on shipments to Mississippi River points, the average increase being 49.5 per cent.

Progressive increase is shown in the car loading of wrought pipe and tubular goods and of iron ore shipped over the Lake Terminal. The average carload weight of the former increased from 44,500 pounds in 1904 to 82,200 pounds in 1918, or 84.7 per cent. The average carload weight of ore increased from 88,105 pounds in 1911 to 115,151 pounds in 1918, or 31 per cent.

Switching charges of trunk line connections incurred in making deliveries at over 500 different industries having private sidings or industrial tracks in the Cleveland-Lorain district are absorbed by the line-haul trunk lines, the amounts ranging from $2 per car to 30 cents per ton with a minimum charge of $7.50 per car.

In substance the defense of the trunk line carriers is that between April 1, 1914, and April 14, 1915, many industries, including some in this district, served by defendants performed the spotting service for themselves, or had it performed by industrial railroads affiliated with them, without compensation out of the through rates; that at the present time some 400 industries located at various points on the

trunk lines, including some in this district, perform the spotting service with their own power, or have it performed by industrial railroads affiliated with them, without compensation out of the through rates; and that a number of industrial railroads serving the public, or industries other than the proprietary industry, received allowances only on a plant-facility basis. They contend that there was no legal obligation on the part of the trunk lines to absorb the charges of the Lake Terminal; that there is no evidence that the charges of the trunk lines were unjust and unreasonable or otherwise unlawful; and that complainants have not shown that they were legally damaged by the failure of the trunk lines to absorb the charges of the Lake Terminal during the 12½-months period. Their defense to the claim of the Lake Terminal for reparation during the period since March 15, 1917, will be considered later.

Whether or not rates in any district should be grouped so as to equalize points on trunk lines and their connections in that district is essentially a rate-making matter involving exercise of judgment. As stated above, except for the 12½-months period of nonabsorption, it has long been the practice of each of the trunk lines to place the industries in a given rate district upon a rate parity whether located on its own line, on that of a connecting trunk line, or on a common-carrier industrial road. The service included placing the cars at convenient points for loading or unloading, regardless of the size or complexity of the industry. In many cases we have approved such group rates and required their equal application through participation in joint rates or otherwise. *Ladd & Co.* v. *Gould Southwestern Ry. Co.*, 36 I. C. C., 179; *McGowan-Foshee Lumber Co.* v. *F., A. & G. R. R. Co.*, 43 I. C. C., 581, 51 I. C. C., 317; and *Stonega Coke & Coal Co.* v. *L. & N. R. R. Co.*, 47 I. C. C., 282.

In the cases before us an adjustment of many years' standing was disrupted for 12½ months and then restored. When the trunk lines canceled the absorption they made no reduction in their rates to and from the points of interchange with the Lake Terminal. To the shipper it was immaterial whether the through rate was published as a joint rate or as a trunk line rate with provision for absorption of the terminal road's charges. No justification is offered as to the reasonableness of the aggregate charges during the period of nonabsorption, and it is not understood that defendants are urging that the adjustment in effect before and since that period is not the proper one.

In *Rates in Chicago Switching District*, 34 I. C. C., 234, we said, at page 242:

> For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a

given point and delivering it at a given point, the delivery at that point is in no sense a "free service." The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.

To the same effect are *Rates on Hay to Chicago*, 34 I. C. C., 150, and cases cited; *Black & White River Transportation Co.* v. *M. P. Ry. Co.*, 37 I. C. C., 244, 246; *Manure from Jersey City, N. J.*, 40 I. C. C., 465, 469; *National Poultry, Butter & Egg Asso.* v. *B. & O. S. W. R. R. Co.*, 43 I. C. C., 392, 397; *Switching Absorptions*, 47 I. C. C., 583, 586; *Reconsignment Case*, 47 I. C. C., 590, 630; and *Atlas Portland Cement Co.* v. *N. & B. R. R. Co.*, 52 I. C. C., 387.

We said in *National Dock & Storage Warehouse Co.* v. *B. & M. R. R.*, 38 I. C. C., 643, at page 650:

> Any increase in rates resulting from such discontinuance must be justified. *Rates on Hay to Chicago*, 34 I. C. C., 150. So far as the shipping public is concerned the effect of a switching absorption is to establish a joint rate; the cancellation of an absorption is the withdrawal of a joint rate, leaving effective the higher aggregate of intermediate rates. *Manufacturers Railway Co.* v. *St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 304. In such a case both the holding out and the withdrawal of the lower through rate are entirely the act of one of the carriers, which must therefore be prepared to justify the increase caused by the withdrawal.

And in *Proportional Rates to Ohio River Crossings*, 43 I. C. C., 458, at page 464, we said:

> When an important and long-standing relation, such as that here considered, is sought to be changed, the justification must be clear and convincing.

Defendants contend that the claims for reparation are controlled by the decision in *Manufacturers Ry. Co.* v. *United States*, 246 U. S., 457. The Manufacturers Railway Company, a common carrier operating a terminal railroad at St. Louis, Mo., and hereinafter called the railway, together with certain shippers on its line, including the industry controlling the railway, brought a complaint against certain trunk lines in which it was alleged in substance that the cancellation by defendants of tariff provisions under which the switching charges of the railway had been absorbed amounted to a refusal longer to continue through routes and joint rates theretofore established; that said action constituted an unlawful discrimination as between industries and shippers on that road and other industries and shippers in St. Louis, subjecting the former to undue prejudice and giving to the latter undue preference; and that the concerted action of the trunk lines was the result of a conspiracy in violation of the Sherman anti-trust law. On the point of particular interest here the Supreme Court said, at page 479, in response to a contention that the cancellation of the absorption tariffs resulted in increased rates and that we erred in failing to require their restoration in the absence of evidence sustaining the reasonableness of the new rates:

But this clause of section 15, by the fair import of its terms, imposes upon the carrier the burden of proving the new rate to be just and reasonable, only where that question is involved in the hearing; it does not call for proof as to matters not in controversy. As the Commission pointed out in its several reports * * * the complaint was not directed to the reasonableness of the separate rates either of the Railway (one of the complainants) or of the trunk lines. The effort was to require the reestablishment of the former absorptions on the ground that without them the continued practice of absorbing the charges of the Terminal constituted a discrimination as against shippers on the line of the Railway.

In other words, the issue in that proceeding was essentially one of undue prejudice, while in the present case the reasonableness of the aggregate through charges resulting from the cancellation of the absorptions is also brought in issue. In this case the reasonableness of the aggregate charges "is involved in the hearing" and as the holding in the *Manufacturers Ry. Co. Case*, quoted above, was based upon the fact that the issue of reasonableness was not presented, there would seem to be no basis for following in this case a holding made upon different issues.

We are of opinion and find that defendants have failed to justify the increased rates in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk line points in the Cleveland-Lorain rate district, and that the aggregate charges applicable during the period of nonabsorption were unjust and unreasonable and unduly prejudicial to the extent indicated.

In *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, we said, at pages 236 and 237:

The act, however, imposed upon defendants the burden of justifying the increased rate. *Newport Mining Co.* v. *C. & N. W. Ry. Co.*, 33 I. C. C., 645; *People's Fuel & Supply Co.* v. *G. T. W. Ry. Co.*, 27 I. C. C., 24. * * *

This provision means that if the carrier fails to justify the increased rate the charges collected thereunder are unjust and unreasonable.

We have uniformly held that the party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable by us. *Nicola, Stone & Myers Co.* v. *L. & N. R. R. Co.*, 14 I. C. C., 199–205; *Mountain Ice Co.* v. *D., L. & W. R. R. Co.*, 21 I. C. C., 45; In re *Wool, Hides, and Pelts*, 25 I. C. C., 675.

To the same effect are *East Jersey R. R. & T. Co.* v. *C. R. R. Co. of N. J.*, 36 I. C. C., 146, 37 I. C. C., 357; *Poteau Coal and Mercantile Co.* v. *A. & S. Ry. Co.*, 40 I. C. C., 459, 460, 461; *Traffic Bureau of Nashville* v. *L. & N. R. R. Co.*, 43 I. C. C., 366, 374; *Fairmont Creamery Co.* v. *A., T. & S. F. Ry. Co.*, 43 I. C. C., 515; *McGowan-Foshee Lumber Co.* v. *F., A. & G. R. R. Co., supra; Oliver Chilled Plow Works* v. *N. Y. C. R. R. Co.*, 45 I. C. C., 356; *Powell River Co.* v. *M. C. R. R. Co.*, 45 I. C. C., 482, 483; *Campbell & Cleaver* v. *St. L. & S. F. R. R. Co.*, 47 I. C. C., 8; *Bryden Horse Shoe Co.* v. *L. & N. E. R. R. Co.*, 53 I. C. C., 275.

We are of opinion and find that complainants made shipments as described and paid and bore the freight charges thereon herein found to have been unreasonable and unduly prejudicial; that they have been damaged thereby in the difference between the transportation charges paid and those that would have accrued at the district rates herein found reasonable; and that they are entitled to reparation with interest.

In *Southern Pac. Co.* v. *Darnell-Taenzer Co.*, 245 U. S., 531, the Supreme Court said, at page 534:

> But here the plaintiffs have paid cash out of pocket that should not have been required of them, and there is no question as to the amount of the proximate loss.

The exact amount of reparation due can not be determined from the record, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice and submit them to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of orders awarding reparation.

Any order for reparation in this proceeding must, of course, be directed against the defendants participating in the transportation, including the Lake Terminal. In view of the affiliation between the latter and complainants the basis of participation in the payment of damages is of public interest and should be scrutinized.

It was agreed by the Lake Terminal and the trunk lines that if reparation should be awarded on the basis of the district rates the former would participate in the payment of damages to the extent that its charges on the shipments covered by the claims exceeded 8 cents per ton, net or gross as rated. We are of opinion and find that this absorption of the Lake Terminal's charges on carload shipments of interstate traffic during the period of nonabsorption to the extent of 8 cents per ton, net or gross as rated, but not to exceed its published charges, would not have resulted in any rebate or unlawful discrimination in favor of the affiliated industries.

We can not accept the Lake Terminal's estimates for 1918 of 11.853 cents per ton as representing the share of railway operating expenses and taxes attributable to each ton of interchange freight, and of 1.709 cents per ton as representing the proportionate charge on interchange traffic necessary to yield a return of 6 per cent upon that portion of the value of the railroad property allocated to such traffic, making a total of 13.562 cents per ton.

Railway operating expenses were $1,022,715.30 and taxes $63,678.09 for 1918, a total of $1,086,393.39. Of this total, $683,286.79, or approximately 63 per cent, has been allocated to interchange traffic and $403,106.60 to local traffic. The proportion of taxes so charged exceeds 82 per cent. The basis for this is not entirely clear.

Of the total number of engine-hours in 1918, 47.29 per cent were devoted to interchange service and 52.71 per cent to local switching. If the total railway operating expenses and taxes are divided in the proportions thus indicated, $513,755.43 would be assigned to interchange and $572,637.96 to local traffic.

In its various computations the Lake Terminal has apparently made two broad groups, viz., interchange traffic and local traffic. The railway operating expenses and taxes allocated to the former were charged against 5,764,716 tons of interchange freight. The derivation of this figure is not clear. One exhibit of the Lake Terminal shows 122,008 "cars interchanged" in 1918. In the analysis, *supra*, of its traffic for that year the total number of cars in items (a), (c), (d), (k), and (l) checks with this figure. The aggregate tonnage for those items is 6,373,331 tons. If the $513,755.43 of expenses assigned to interchange traffic are charged against this tonnage, the cost of service would come to 8.061 cents per ton, instead of 11.853 cents as claimed.

But even this reduced figure could not be accepted as correct. The cost of interchange traffic has been computed by the Lake Terminal on the basis of 122,008 cars, and of local switching on the basis of 160,273 cars, a total of 282,281 cars. The analysis of traffic, *supra*, shows that 324,966 loaded freight cars were handled, in addition to some passenger cars. In other words, the railway operating expenses and taxes have been charged to 282,281 cars, ignoring 42,685 loaded freight cars and some passenger traffic. Apparently the cars to which no expense is charged are the 42,167 under item (j) and 518 under item (m) of the analysis, *supra*.

So far as the return at 6 per cent on the value of the property used in and allocated to interchange traffic is concerned, little need be said. The basis for the allocation is not clear and apparently the value of all property except "value of equipment used in local switching" has been charged to the interchange traffic. The distribution of this return over 6,373,331 tons instead of over 5,764,716 tons would somewhat reduce the amount per ton. Moreover, the return is based upon $1,880,183.59, a greater valuation than the $1,740,886.63 claimed as of December 31, 1918.

Apparently no attempt has been made to segregate the railway operating expenses, taxes, or value of property attributable to or used in interstate commerce from those properly chargeable to intrastate commerce. The data submitted are not sufficient to enable us to make a more extended analysis, but the foregoing indicates the infirmities of the showing made.

Before passing from the subject, it should be noted that the Lake Terminal estimates the cost of local switching for 1918 as $2.515 per car, based upon 160,273 cars, apparently those in items (e) and

(g) of the analysis, *supra*, upon which $3 per car was charged. The record does not disclose how much less cost attaches to the service rendered in reswitching and in handling less-than-carload traffic, for which the respective charges are $1.50 per car and 8 cents per ton, minimum $1 per car. In seeking a means to increase earnings the Lake Terminal should ascertain whether or not these classes of service are bearing their fair share of its expenses without undue burden upon interstate commerce.

Upon consideration of all facts of record we are of opinion and find that for the future an absorption of 10 cents per ton, net or gross as rated, not to exceed the published charges of the Lake Terminal and provided by appropriate tariffs, or a division out of the district rates in that amount accruing to the Lake Terminal, would not be unreasonable or result in a rebate or unlawful discrimination in favor of the affiliated industries.

There remains for consideration the claim of the Lake Terminal for reparation from the trunk line carriers to the extent of the difference between the divisions or absorptions paid to it since March 15, 1917, and the amounts which we may find just and reasonable.

The trunk lines say that during federal control they have had nothing to do with the amount of the absorption. From March 15 to December 31, 1917, the Lake Terminal maintained a published tariff charge of 8 cents per ton. The full amount of this charge was absorbed under a stipulation between the Lake Terminal and the trunk lines, which is of record. The trunk lines contend that they could not legally pay more than the published amount. We are of opinion and find that no basis has been shown for an award of reparation to the Lake Terminal. *Manufacturers Railway Co.* v. *St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93, 108; *East Jersey R. R. & T. Co.* v. *C. R. R. Co. of N. J.*, 36 I. C. C., 146, 150; and *Manufacturers Ry. Co.* v. *United States*, 246 U. S., 457, 483.

On brief the Lake Terminal asks an order requiring the Director General and the trunk lines to readjust their per diem reclaim arrangements with it so as to result in neither profit nor loss to it. This issue is not raised by the pleadings and, aside from that, the record does not show what would have been the results under different plans, and the argument and briefs do not deal with the legal phases of the matter. It can not be disposed of here.

No order is necessary at this stage.

WOOLLEY, *Commissioner*, dissents.

EASTMAN, *Commissioner*, dissents and will later file a separate report.[1]

[1] See 56 I. C. C., 272.

No. 10401.

NATIONAL FIREPROOFING COMPANY
v.
DIRECTOR GENERAL, HOCKING VALLEY RAILWAY COMPANY, ET AL.

Submitted June 4, 1919. Decided December 30, 1919.

Present intrastate rate, initiated by Director General of Railroads, of $2.10 per ton on coal, in carloads, from Nelsonville, Ohio, to Aultman, Ohio, found to be unreasonable. Reasonable maximum rate of $1.60 per ton prescribed.

Gallagher, Kohlsaat & Rinaker and *E. B. Wilkinson* for complainant.

Wilson & Rector and *W. A. Parker* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of clay products, with a plant at Aultman, Ohio. By complaint, filed January 11, 1919, as amended, it alleges that the rates charged for the intrastate movement of numerous carloads of coal shipped subsequent to January 1, 1917, from Nelsonville, Ohio, at which point it owns coal deposits, to Aultman were, and that the present rate is, unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of a joint rate not to exceed the rate contemporaneously in effect from Haydenville, Ohio, to Aultman. Rates will be stated in amounts per net ton.

Our jurisdiction over the rates assailed attaches only to those in effect on and after June 25, 1918, the date upon which the present rates were initiated by the President through the Director General of Railroads by his General Order No. 28. The evidence fails to disclose any shipments since June 24, 1918. The intrastate rates legally applicable to shipments moving prior to that date and complainant's prayer for reparation based thereon are beyond our jurisdiction, and will not be considered.

Nelsonville is 5.6 miles southeast of Haydenville. Both are local stations on the Hocking Valley Railway, situated in what is known

as the Hocking coal field. There were and are no joint rates on coal from any point in the Hocking field, except Haydenville, to Aultman, a local station on the Baltimore & Ohio Railroad between Akron and Canton, Ohio, 270.2 miles from Nelsonville by way of the Hocking Valley to Columbus, Ohio, and the Baltimore & Ohio beyond, the route traversed by complainant's shipments. The short-line distance is 170.2 miles by way of Lancaster, Ohio, the Pennsylvania lines to Valley Junction, Ohio, and the Baltimore & Ohio to destination. Defendants say that this route is impractical, involving a number of local hauls and transfers, and that the shortest practical route is by the Pennsylvania lines from Columbus to Akron, and thence by the Baltimore & Ohio, a distance of 214 miles.

Effective June 25, 1918, the Director General of Railroads increased the joint rate from Haydenville to Aultman, which applied only by way of the Hocking Valley to Columbus and the Baltimore & Ohio beyond, from $1.15 to $1.50. The rate Nelsonville to Aultman is made upon the combination on Haydenville. The local to Haydenville was 40 cents prior to June 25, 1918, and on that date was increased to 60 cents, which, added to the $1.50 rate from Haydenville, resulted in a combination from Nelsonville of $2.10, the present rate.

Complainant contends that as Nelsonville and Haydenville are both in the Hocking field from which ordinarily group rates apply, the rate to Aultman from Nelsonville ought not to exceed that from Haydenville. The present rate from Nelsonville to Aultman, if applied via the Pennsylvania lines to Akron and the Baltimore & Ohio beyond, would yield 9.81 mills per ton-mile. A rate of $1.50 would yield 7.01 mills. Complainant showed that the $1.50 group rate applies from the Hocking field, including the Shawnee and Crooksville districts served by the Baltimore & Ohio, to Aultman for an average distance greater than that from Nelsonville; that it applies to Akron and Canton, and to various other points in the same vicinity such as South Akron, Barberton, Massillon, and Cuyahoga Falls, Ohio; that it also applies from the Hocking field to other points, including Cleveland, Elyria, and Lorain, Ohio, for distances ranging from 174.7 to 273 miles; and that the same rate applies to those points from the Jackson and Pomeroy-Rutland, Ohio, coal fields, which are south of the Hocking field. It also cited rates on coal from the Jackson and Pomeroy-Rutland fields to points in Michigan, Ohio, Indiana, and Illinois, which ranged from $1.50 to $2.40 for distances of from 218 miles to 498 miles.

The witness for the Hocking Valley asserts that while this carrier participates in group rates of $1.50 from the Hocking, Pomeroy-Rutland, and Jackson fields to Akron, Canton, and Cleveland and other

points in northeastern Ohio, these rates apply only over the direct routes to those points and points intermediate; that it has never met these rates in connection with the Baltimore & Ohio because of its circuitous route; that the latter carrier publishes no rates from the southern Ohio coal fields to any of these points except from the mines on its own line in the Shawnee and Crooksville district of the Hocking field to meet rates over short-line routes from the Hocking field; that the joint rate from Haydenville to Aultman constitutes a distinct departure from the prevailing practice, having been established in 1908 as a concession to this complainant to permit it to transport to its plant at Aultman the occasional excess of coal obtained by it from its mine at Haydenville and not consumed in its plants there; that prior to complainant's shipments in 1917 there had been no movement from Nelsonville and no application for a joint rate from that point; and that further movement is doubtful in view of the fact that the natural and logical source of complainant's supply is eastern Ohio, which witness for complainant concedes to be the primary source of its supply, and the Pittsburgh district, from which the distances are shorter and the rates lower. Complainant insists that it is entitled to a reasonable rate upon which to move its coal from Nelsonville to Aultman whenever it may be desirable to do so. The defendants do not attempt to defend the $2.10 rate from Nelsonville. It appears that they are and have been for some time willing to establish a rate of $1.60 over the route of movement, provided the complainant would agree that the Haydenville rate be increased to that amount, but complainant has always refused. Defendants cited rates of $1.60 from the Hocking field to points on the Erie Railroad east of Akron to and including Ravenna, Ohio, for an average distance of 212 miles, and rates of $1.50 from the Hocking field to representative points in Toledo territory for distances ranging from 149 to 192.7 miles.

We find that the rate assailed is and for the future will be unreasonable to the extent that it exceeds or may exceed $1.60 per net ton via the route of movement. On the record made we may not require the establishment of this or any other rate over the more direct route from Nelsonville to Aultman via the Hocking Valley to Columbus, the Pennsylvania lines from Columbus to Akron, and thence by the Baltimore & Ohio; but, if the Director General elects to apply the rate of $1.50 over this route, application may be made for cancellation of our order.

An appropriate order will be entered.

No. 10535.

NORTHERN GRAIN & WAREHOUSE COMPANY

v.

DIRECTOR GENERAL, NORTHERN PACIFIC RAILWAY COMPANY, ET AL.

Submitted July 7, 1919. Decided December 10, 1919.

Following *Northern Grain & Warehouse Co.* v. *O. T. Ry. Co.*, 55 I. C. C., 101, defendants' tariff provision resulting in increased charges on wheat, in carloads, in cars of less than 80,000-pounds capacity furnished at carrier's convenience, from Culver, Oreg., to Chicago, Ill., found not justified. Reparation awarded.

A. J. Parrington for complainant.

Charles A. Hart for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the grain business at Portland, Oreg., by complaint seasonably filed alleges that the charges collected on a carload of bulk wheat shipped in January, 1917, from Culver, Oreg., to Chicago, Ill., were unreasonable, and asks reparation. Rates are stated in cents per 100 pounds.

The shipment, weighing 42,410 pounds, moved from Culver to Chicago on January 15, 1917, over the lines of the Oregon-Washington Railroad & Navigation Company, and Oregon Short Line, Union Pacific, and Chicago & North Western railroads. Charges were collected at the rate of 65 cents applicable to shipments moving in cars of 40,000 pounds marked capacity, the size of the car used. Complainant insists that this car was furnished in lieu of a car of 80,000 pounds capacity ordered by it. The bill of lading and freight bill bear notation that the car used was furnished at the carrier's convenience in lieu of an 80,000-pound capacity car ordered.

In the tariff naming the 65-cent rate defendants also published for alternative application a rate of 50 cents from and to the same points, subject to a minimum weight of 80,000 pounds, except that when cars of less than 80,000-pounds capacity are furnished, the minimum carload weight will be the marked weight capacity of the car used, but not less than 60,000 pounds.

The lowest per-car charge under this rate and rule was $300. Complainant does not attack the measure of the rate charged or the minimum applicable thereto, its sole contention being that the provision above referred to which fixes the minimum weight in connection with the 50-cent rate at not less than 60,000 pounds, in cases where the carrier furnishes a car of less capacity, is unreasonable. Apparently complainant was prepared to load 80,000 pounds. It contends that as the smaller car was furnished for the carrier's convenience, it ought not to be deprived of the benefit of the lower rate which would have been available if a car of the size ordered had been furnished. Reparation is accordingly asked on the basis of a rate of 50 cents and the actual weight of the shipment.

Prior to February 22, 1916, the defendant's tariff provided in connection with the 50-cent rate a minimum of 80,000 pounds, except that, when cars were loaded to capacity, actual weight would govern, but in no case less than 77,000 pounds. On that date the limitation was removed, so that if the carrier was unable to furnish an 80,000-pound car, the minimum in connection with the 50-cent rate was the marked capacity of the car furnished. The present provision became effective November 20, 1916. Complainant urges that the provision in effect between February 22 and November 20, 1916, would be reasonable and proper for the future.

The establishment of the 60,000-pound limitation on November 20, 1916, resulted in increased charges which the defendants have the burden of justifying. For the defendants it is insisted that the car used was ordered by complainant for the shipment. Their testimony in support of this, however, is insufficient to rebut the presumption that the notations on the bill of lading and freight bill are correct. Defendants also offered testimony intended to show that the provision complained of is not unreasonable. This testimony is substantially similar to that offered in *Northern Grain & Warehouse Co.* v. *O. T. Ry. Co.*, 55 I. C. C., 101, which involved the reasonableness of a tariff provision substantially similar to the one here in question. In that case we found that the defendants had not justified the increased charges resulting from the establishment of this tariff provision and awarded reparation accordingly.

Following the case cited and upon the record herein we find that the defendants have not justified the increased charges resulting from the establishment of the tariff provision here in question and that its application in connection with the transportation of wheat, in carloads, from Culver to Chicago was unreasonable to the extent that it provided for the assessing of charges on shipments in cars of less than 80,000-pounds capacity, furnished for the carrier's convenience, in excess of those that would have accrued upon the marked

capacity of the car used, and that for the future, so long as defendants maintain a flat minimum applicable in connection with a rate on this traffic from and to these points, it will be unreasonable to provide for the assessing of charges on shipments in cars furnished for the carrier's convenience of a capacity less than the minimum, in excess of those that would accrue upon the marked capacity of the car used. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued if the rule herein found reasonable had been in effect, and that it is entitled to reparation in the sum of $63.62, with interest. An appropriate order will be entered.

No. 10133.

GALLATIN COAL & COKE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted October 9, 1919. Decided November 20, 1919.

Defendants' practices with respect to furnishing coal cars and transportation facilities not shown to be unduly prejudicial to complainant, served singly by the Louisville & Nashville, or unduly preferential to a neighboring competing mine served by the Louisville & Nashville and the Cleveland, Cincinnati, Chicago & St. Louis railways under a joint trackage arrangement.

R. W. Ropiequet for complainant.

C. P. Stewart, *W. A. Northcutt*, and *R. Walton Moore* for all defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

The complainant operates a bituminous coal mine at Equality, Ill., 8.22 miles south of Eldorado, Ill., on the Shawneetown branch of the Louisville & Nashville Railroad. Situated 2.4 miles south of Eldorado, at Grayson, Ill., on the same branch line, is a similar mine operated by the Big Creek Colliery Company, hereafter styled the Grayson mine. At Eldorado the tracks of the Louisville & Nashville cross and connect with those of the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereafter called the Big Four. Under a joint trackage agreement the Big Four has, for about 12 years, operated over the rails of the Louisville & Nashville from Eldorado to Grayson for the purpose of serving the mine at that point. The Grayson mine has access to the car supply of both lines, whereas complainant depends on the Louisville & Nashville alone for its equipment. It is alleged in the complaint that the arrangement which operates to constitute the Grayson mine a joint-line mine, making available to it the car supply and transportation facilities of both carriers, while denying to complainant like treatment, results in undue prejudice to complainant and undue preference to the Grayson mine, which we are asked to remove.

In *In re Irregularities in Mine Ratings*, 25 I. C. C., 286, we held that a mine served by two carriers should have its full rating on days

when it orders cars from one carrier only, and when ordering from both carriers, its rating by each of the carriers should not exceed 75 per cent of its full rating, thus giving it a maximum of 150 per cent of its rating on such days.

The complainant's mine being purely local to the Louisville & Nashville was accorded its full rating as a one-line mine. On October 10, 1918, rules prescribed by the Director General of Railroads provided a formula for the rating of mines and the distribution of cars by which all mines, whether singly or jointly served, received equal consideration. Since that date, and for four months prior thereto, complainant's mine has been rated at 750 tons per day, equivalent to 15 cars. The rating of the Grayson mine has been 1,250 tons, or 25 cars per day. It appears that complainant received a greater percentage of empty equipment in proportion to the cars ordered than did the Grayson mine, for it is shown that during the six months prior to the hearing complainant ordered 2,359 cars and was furnished 1,988 cars, the percentage being 84.3. Its competitor ordered 3,150 cars and received 2,618, or 83.1 per cent. Defendants assert that the distribution of cars as between these mines has been strictly in accordance with the prevailing rules. The record shows that complainant's grievance with respect to its relative rating and percentage of car supply, while apparently without merit prior to October 10, 1918, is certainly at the present time unfounded.

The remaining allegation, somewhat indefinite in scope, accuses defendants of unduly preferring the Grayson mine in according it "transportation facilities" which are denied to complainant.

Under the trackage agreement, the Louisville & Nashville extends to the Big Four the use of its rails from Eldorado to Grayson upon payment of a trackage charge, together with a proportion of the expenses of operation and maintenance and taxes, based on the total number of coal cars handled by both roads to and from Grayson. By agreement, the Big Creek Colliery Company obligated itself to reimburse the Big Four to the extent of all moneys paid by it to the Louisville & Nashville for the trackage rights. With respect to its allegation that the Grayson mine is given an advantage by preferential transportation facilities, complainant contends that its competitor by virtue of its additional channel of transportation has access to the territory served by the Big Four and its connections for the disposition of coal; that a greater operating efficiency is thereby obtained resulting in an advantage to the Grayson mine in its ability to keep miners in regular employment and minimize the cost of production; and that its restriction to the car supply of one carrier substantially confines the sale of railroad fuel to that road.

Complainant claims to have suffered from labor shortage which is attributed to its inability to maintain a complete operating organization in face of the preference to its competitor; and that its volume of production has been materially reduced with a corresponding increase in the unit cost of production. It is asserted that these conditions continue to prevail despite the modification of defendants' rules for ratings and car distribution.

Complainant's reference to the variance in freight rates from Equality and Grayson to certain territories incidental to the issue of preference to the Grayson mine in its status as a joint-line mine. No testimony was introduced by the complainant to show that its rates were unreasonable or unduly prejudicial.

In 1907 the operators of the Grayson mine, predecessors of the Big Creek Colliery Company, seeking an additional outlet for their coal, contemplated the construction of a private spur track to connect with the Big Four at Eldorado. Through negotiations with defendants the owners of the mine obtained their objective by payment to the Big Four of stipulated charges, previously described, thus avoiding the expense of building their own line. The present operators of the Grayson mine, by agreement, continued the same arrangement.

In several decisions, cited by complainant, we have denounced rates and practices of carriers which create unlawful prejudices and preferences to shippers through the operation of trackage arrangements, among them being *Huerfano Coal Co.* v. *C. & S. E. R. R.*, 41 I. C. C., 657. A review of those cases is not convincing that the complainant in this case has been or is unfairly treated, for they deal only with questions of car supply and freight rates. Defendants' car distribution to complainant has been equitably and properly conducted and, as stated, the rates are not in issue. That the Grayson mine was not preferentially enabled to operate with superior efficiency is evidenced by the fact that it was furnished, during the six months prior to the hearing, 2,618 cars and shipped 1,828, a ratio of 69.8 per cent, whereas complainant received 1,988 cars and shipped 1,495, a percentage of 75.2. The conspicuous difference between the number of cars furnished and the number shipped is explained as due to the custom of counting cars left over empty or partly loaded from one day as equivalent to that many cars furnished on the succeeding day.

Unquestionably, carriers may not through trackage arrangements extend preferential treatment to one shipper to the prejudice of another, or continue such an arrangement if it develops into an undue advantage to a favored shipper. Transportation by the Big Four of coal from the Grayson mine to Eldorado over Louisville & Nash-

ville rails, in substitution for the proposed private spur track, can not be condemned unless accompanied by consequences, actual or potential, which unduly prejudice complainant.

McCHORD, *Commissioner:*

In this case the examiner proposed a report which was issued and served upon the parties appearing at the hearing which is, with certain minor modifications made by us, the foregoing. The complainant filed exceptions to the report as proposed, and argument was had thereon. We have carefully considered all the facts of record and adopt the foregoing statement of the facts proposed by the examiner, as modified by us, as our own.

We are unable to find from the record that any discrimination arises out of the trackage agreement referred to, with respect to the distribution of cars, which is the gravamen of this complaint. However, the decision reached in this case is not to be construed as indicating our approval of this agreement. There was an intimation in the record that the rate-discrimination feature would be presented to us in another proceeding and in that event will be considered by us on the record then made.

We find from all of the facts and circumstances of record that no undue or unreasonable preference was shown the Grayson mine within the issues reached, or any undue or unreasonable prejudice or disadvantage to the complainant.

An order dismissing the complaint will therefore be entered.

No. 10260.

ERNEST B. TIMMONS ET AL.

v.

BALTIMORE, CHESAPEAKE & ATLANTIC RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted March 6, 1919. Decided December 10, 1919.

Minimum weight of 15,000 pounds applicable on strawberries in carloads from points in Delaware, Maryland, and Virginia, to points in New England, found not unreasonable, but unduly prejudicial in favor of Philadelphia, Pittsburgh, and New York. Complainant not shown to have been damaged thereby. Reparation denied.

Hooper S. Miles and *Thomas H. Lewis, jr.*, for complainants.
Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainants, dealers in strawberries in Maryland, Delaware, Virginia, and Massachusetts, by complaint filed September 6, 1918, allege that the minimum weight of 15,000 pounds applied by the defendants on shipments of strawberries, in carloads, during the years 1917 and 1918, from points in Delaware and the eastern shore of Virginia and Maryland to New England destinations, was unreasonable, unduly prejudicial, and unjustly discriminatory in favor of other markets in trunk line territory, principally Philadelphia and Pittsburgh, Pa., and New York, N. Y., and against points in New England. It is also alleged that 15,000 pounds of strawberries can not be refrigerated properly in the equipment furnished. The complaint asks for reparation and the establishment of a reasonable minimum for the future.

Strawberries grown in the originating territory in question, hereinafter called the eastern shore, ripen and are shipped to points in New England and other northern markets during the period from about May 15 to June 20. They are packed in crates containing 32 quarts and weigh 50 pounds per crate. The dimensions of these crates are such that in Fruit Growers Express refrigerator cars, the equipment generally used for the transportation of berries from this territory, 16 can be loaded end to end lengthwise of the car and

7 side by side across the car; so that one tier contains 112 crates weighing 5,600 pounds, and two tiers 224 crates, weighing 11,200 pounds. It appears to be the practice of the shippers to load two tiers in this manner and 16 additional crates on the third or top tier—8 at each end of the car near the ice bunkers. When so loaded the total weight of the shipment is 12,000 pounds. To secure the free circulation of air, the crates are separated from each other and from the floor of the car by wood strips. The distance between the roof of the car and the top of the crates on the third tier is about 3 feet.

Prior to April 15, 1916, the minimum applicable to strawberries in carloads from the eastern shore to points in New England, Philadelphia, Pittsburgh, and New York, and other points in trunk line territory was 12,000 pounds. The rate applicable to points in New England was double first class, while to the other points in trunk line territory the rate applicable was one and one-half times first class. On April 15, 1916, as to some of the points of origin, and August 19, 1916, as to others, following a complaint from receivers of strawberries at Providence, R. I., the rate to points in New England was reduced to one and one-half times the first-class rate. At the same time the minimum applicable on shipments to New England was increased to 15,000 pounds, and the running time of the trains was extended from two days to three days. The latter rate and minimum weight are still in effect. Defendants admit that there is no justification for a higher minimum on this traffic to New England than to other points in trunk line territory and state that steps have been taken to make the minimum 15,000 pounds to the other points. The rate of one and one-half times first class still applies to those points.

In order to load 15,000 pounds it is obviously necessary to place 300 crates in the car, or two full tiers and a third tier containing 76 crates. Complainants do not contend that the cars furnished are not the proper equipment for the transportation of strawberries, but insist that as the berries are picked ripe and while the weather is warm, it is impossible to refrigerate thoroughly and equally more than two tiers, the refrigeration of the top tier being inadequate, causing rot and mold in the berries in those crates and more or less injury to the berries in the crates in the lower tiers.

The bunkers of the cars used are filled with ice, long enough beforehand for the cars to become cool before loading. The berries are picked ripe, and are not precooled but are loaded as soon as possible after being picked. When loaded and ready for transportation, the bunkers contain somewhat less than 10,000 pounds of ice and the cars are so constructed that the air, cooled by the ice in the bunkers,

comes out at the bottom, circulates through the car, and as it becomes warmer, rises to the top of the car, where it reenters the bunkers. Since the running time of the trains was lengthened to three days the cars have been reiced at Greenville, N. J. On arrival at this point and also at destination, the bunkers are at least half full and generally two-thirds full of ice, which is stated to be more than necessary to produce adequate refrigeration.

In support of complainants' contention that the minimum of 15,000 pounds is too high to permit proper refrigeration, receivers of berries at Fitchburg, Springfield, and Boston, Mass., testified that the berries in the third or top tier are generally in a soft and moldy condition and have to be sold for considerably less than those in the lower tiers. Complainants' evidence with respect to the condition of berries at destination lacks particularity. Apparently but few cars have been loaded to 15,000 pounds.

For the defendants, the general manager of the Fruit Growers Express testified that if the berries are in good condition when shipped, 15,000 pounds will properly refrigerate from the eastern shore to New England destinations. He testified that, while he had not examined any shipments at points in New England, he had personally examined hundreds of cars of strawberries at other destinations, which arrived in good condition, containing as much as 17,000 pounds, and which had moved longer distances than from the eastern shore to New England. While those strawberries were shipped in smaller crates, they were loaded to the same height as three tiers of 32-quart crates. He also testified that an agent was employed at Boston and other points in New England to report to him any complaints regarding the bad condition of fruit arriving at such places, and that very few complaints had been received. These complaints are attributed to the bad condition of the berries at the time they are shipped, due, to some extent, to unseasonable weather conditions.

As above shown, the season for strawberries is relatively short, and as this commodity is highly perishable it requires expedited transportation service. Defendants observe that as at times it is difficult to procure cars for the transportation of berries from the eastern shore, the cars used should be loaded as heavily as practicable.

It is stated that the two-day run maintained prior to 1916 was the same as that of the express companies and that the change in the schedule was due to the fact that there was considerable congestion on defendants' lines between the eastern shore and New England, which made it impossible to make the run in two days regularly. The change in the schedule followed the decision of the Supreme Court of the United States in *N. Y. & Norfolk R. R.* v. *Peninsula*

Exchange, 240 U. S., 34, in which a recovery in the lower court for failure by the carriers to transport a carload of berries within the time customarily occupied in their transportation, was affirmed.

It is observed that the Commission in *Ozark Fruit Growers Asso.* v. *St. L. & S. F. R. R. Co.*, 16 I. C. C., 106, found that a minimum of 17,000 pounds on strawberries from points in Louisiana and Arkansas was not unreasonable. This minimum was also approved by us in *Fruits and Vegetables*, 43 I. C. C., 291, involving shipments of strawberries from Alabama and Tennessee to various destinations, and *Providence Fruit & Produce Exchange* v. *American Express*, 51 I. C. C., 167, involving shipments of strawberries from Louisiana, Mississippi, Tennessee, and Kentucky to Providence, R. I.

Complainants argue that the strawberries grown on the eastern shore do not carry as well as those grown in the originating territories involved in the cases cited, due to the difference in the berries and climatic conditions, but no substantial evidence to support this contention was introduced. For the defendants it was stated that the berries grown in the territories involved in the cases cited are as perishable as those grown on the eastern shore.

The minimum carload weight is a factor in the carload rate and in connection with the rate determines the carload earnings. Any reduction in the minimum weight without an increase in the rate would, therefore, reduce the carload earnings of the carrier and would be equivalent to a reduction in the rate itself. The rate from the eastern shore to Boston is $1.02, and the average distance from representative points of origin in this territory to Boston is 474 miles. Based on this rate and a weight of 15,000 pounds, the carload earnings would be $153, or 32.3 cents per car-mile. If the minimum weight were reduced to provide for cars containing two tiers loaded in the manner customary on the eastern shore, which complainants contend is the maximum amount of berries that will properly refrigerate, this would mean a weight of 11,200 pounds, and based on the present rate, the carload earnings would be reduced to $114.24, or 24.1 cents per car-mile. The present earnings are less than those that would accrue under the former minimum and rate applicable. It is not contended that the present rate is unreasonable.

As above stated, complainants' evidence in support of their contention that the minimum of 15,000 pounds is too high to permit proper refrigeration is based mainly on the fact that some shipments loaded to that weight have arrived in a bad condition. The minimum complained of compares favorably with that applicable to like traffic in other territories and to other perishable fruit, and the fact that some shipments do not arrive in good condition is an insufficient reason for reducing the minimum.

We find that the minimum weight complained of is not shown to have been or to be unreasonable but that it was, is, and for the future will be, unduly prejudicial to the extent that it exceeded, exceeds, or may exceed, the minimum applicable on like traffic from the territory of origin to Philadelphia, Pittsburgh, or New York. There is no proof of damage to complainants by reason of the lower minimum to the latter points and reparation is denied.

An order will be entered accordingly.

No. 10520.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, WEST JERSEY & SEASHORE RAILROAD COMPANY, ET AL.

Submitted June 30, 1919. Decided December 10, 1919.

Rate of $5.10 per ton on niter cake in carloads from Carney's Point, N. J., to Norfolk, Va., found to have been and to be unreasonable to the extent that it exceeded or exceeds $2.80 and $4, respectively. Reparation awarded.

Harvey S. Farrow for complainant.

Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

By complaint filed March 17, 1919, it is alleged that the rate charged on 12 carloads of niter cake moving from Carney's Point, N. J., to Norfolk, Va., between February 6 and February 12, 1918, was and is unreasonable. Reparation and rates for the future are asked. Rates will be stated in amounts per net ton except as otherwise specified.

Niter cake is a residue remaining as by-product of the chemical treatment of nitrate of soda after it has been chemically treated to produce commercial nitric acid. It is used in the manufacture of iron and in the production of fertilizer. The complainant's witness

testified that the selling price for niter cake was $4 per ton delivered at Norfolk. Formerly complainant wasted it in the waters adjacent to its plants.

The shipments moved over the West Jersey & Seashore Railroad to Camden, N. J.; thence by way of the Delaware River bridge over the Philadelphia, Baltimore & Washington Railroad and the New York, Philadelphia & Norfolk Railroad to destination, a distance of 313 miles. The rate collected was the legally applicable sixth-class rate of 25.5 cents per 100 pounds, or $5.10 per ton, governed by the southern classification.

Complainant contends that as niter cake is a low-grade commodity it should be accorded a commodity rate from Carney's Point on a level lower than the class basis. It lays stress on contemporaneous commodity rates on fertilizer from Paulsboro, N. J., to Norfolk of $1.85; on manure from Camp Dix, N. J., to Norfolk of $1.78, and on niter cake from Philadelphia to Norfolk of $1.80. The defendants maintain that conditions, competitive and otherwise, control these rates which are not present at Carney's Point. They explain that the commodity rate from Paulsboro was established to avoid receiving at their congested terminals at Philadelphia, from which a low water-competitive rate was in effect, fertilizer which shippers had been accustomed to send by float to that point from Paulsboro; that the commodity rate on manure from Camp Dix was established to effect the disposal of a large quantity of manure accumulating at that point during the war; and that the rate from Philadelphia is due to actual water competition not present at Carney's Point. Since the shipments moved, the rates to Norfolk on the commodities mentioned have been increased to $2.625, $2.50, and $2.60 from Paulsboro, Camp Dix, and Philadelphia, respectively. Complainant also cites a rate on niter cake of $2.94, since increased to $4.30, from Carney's Point and Gibbstown, N. J., to Buffalo, N. Y., for distances exceeding 400 miles. Other commodity rates on niter cake and various commodities relatively lower than the rate attacked were offered for comparison.

The defendants admit that niter cake is a comparatively low-grade commodity but they insist that the facts do not warrant a departure from the class basis and the establishment by us of a commodity rate from Carney's Point. They point out that no request was made for the establishment of such a rate prior to the movement of these shipments; that a commodity rate is instituted primarily where the movement of a particular commodity is heavy and continuous; that complainant shipped the niter cake from Carney's Point only because of a temporary inability to send it from its plant at Hopewell, Va., from which the rate to Norfolk for a distance of 90 miles was

$1; and that the prospect of a regular movement is uncertain. Defendants suggest the establishment of a rate of $4 on this traffic for the future, provided there is a reasonably definite assurance of a fairly steady movement. Making allowance for the 15 per cent and 25 per cent increases in rates since these shipments moved a $4 rate now would be equivalent to $2.80 at the time when the shipments moved.

The shipments averaged about 34 tons per car. The rate charged yielded 16.3 mills per ton-mile and 55 cents per car-mile. At a rate of $2.80 the revenue per ton-mile would have been approximately 9 mills and the car-mile revenue 30 cents.

We find that the rate charged was unreasonable to the extent that it exceeded $2.80 per ton, and that for the future a reasonable rate on this traffic from and to the points in question should not exceed $4 per ton. We further find that complainant made the shipments as described and paid and bore the charges thereon and that it has been damaged to the extent that the charges paid exceeded those which would have accrued at the rate herein found reasonable. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 10244.

NORTHERN COAL COMPANY

v.

MOBILE & OHIO RAILROAD COMPANY AND DIRECTOR GENERAL.

Submitted October 9, 1919. Decided November 20, 1919.

Complainant, operator of a stripping coal mine at Millstadt, Ill., alleged that defendant subjected it to unjust discrimination and undue prejudice, and unduly preferred neighboring shaft mines, in the allotment and distribution of coal cars during a period of car shortage: *Held*, That in view of complainant's physical disadvantages, recurring interruptions in operations, and irregularity of production, the record does not show that it was possible for complainant to have loaded more cars than were actually furnished by defendant, notwithstanding the fact that it received a relatively less percentage of its pro rata than did the shaft mines; and that the record does not show that the allegations of the complaint are sustained. Complaint dismissed.

R. W. Ropiequet for complainant.

Carl Fox, *D. S. Lansden*, and *R. Walton Moore* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

The complainant operates a coal mine about 3½ miles from Millstadt, Ill., the terminus of the Millstadt branch of the Mobile & Ohio Railroad, hereinafter styled defendant. This branch line is about 7 miles long and connects with defendant's St. Louis division of its main line at Millstadt Junction, Ill. By complaint, filed August 29, 1918, it is alleged that during the period from September 1, 1916, to June 12, 1917, defendant unduly discriminated against complainant in the distribution of coal cars and unduly preferred other coal mines and industries on the St. Louis division by furnishing them a larger proportion of available equipment, based upon rated capacity, than was contemporaneously furnished complainant, and by supplying certain mines, which were not whole-output railroad-fuel mines, with cars for railroad-fuel purposes, which were not charged by defendant against those mines in the distribution of available equipment. It is alleged that defendant's unlawful acts subjected complainant to great loss, and damage is sought in the sum of $56,462.80.

At the hearing the presentation of evidence was limited to the question of the alleged unjust discrimination. Testimony regarding the alleged damage due to defendant's acts was reserved pending the disposition of this issue.

Complainant's mine was what is known as a strip or stripping mine, all of the other mines on the St. Louis division were shaft mines. A stripping mine is one from which the superincumbent soil, known as the overburden, is removed and thrown aside by steam shovels, smaller shovels following and loading the coal into pit cars. The overburden ranged from 18 to 32 feet in depth. The complainant removed the earth above the coal with an enormous steam shovel, weighing over 200 tons, which rested upon two narrow-gauge tracks, the centers of which were 22 feet apart. The tracks were made of short-length steel rails laid upon ordinary ties, and were taken up behind and laid ahead of the shovel as it progressed. The width of the cut made by this shovel varied according to conditions, the maximum being from 50 to 60 feet. The removed earth was placed either in the space where coal had been taken out or on top of the banks. The seam of coal varied in thickness from 5 feet 6 inches to 8 feet 10 inches. There were, however, places where there was no coal and other places where the coal was not of merchantable quality. After the coal was uncovered it was broken by using explosives and loaded into pit cars of 5 or 6 tons capacity by a smaller steam shovel which followed the stripping shovel. The loaded pit cars were hauled over a narrow-gauge track 3½ miles to complainant's tipple adjacent to defendant's tracks at Millstadt, where the coal was passed over screens, and loaded into coal cars.

There was a stratum of loose, sandy soil from 2 to 5 feet in depth immediately above a large part of complainant's coal. Frequent slides of earth occurred, because this soil did not support the overburden. These slides caused serious delays, for not only was the uncovered coal re-covered, but the stripping shovel was prevented from working. The complainant claims this was an additional reason why its mine required a regular and ample car supply.

Complainant abandoned the operation of its mine on June 12, 1917. Prior to September 1, 1916, defendant's car supply had been adequate and no difficulty arose through its distribution. About that date there developed an unusual demand for coal and concurrently a severe car shortage. It is contended by complainant that the defendant did not observe its rules and mine ratings in effect during this period, but completely ignored them in dealing with complainant and unduly and unjustly discriminated against it in the proper distribution of available equipment.

Prior to September 30, 1916, complainant's mine was rated at 320 tons a day. On that day it was increased to 500 tons and remained at that figure until operations were discontinued. Defendant had no published rules for car distribution, but the necessary employees were furnished with letter of instructions regarding the manner of allotting equipment. These instructions were issued in 1909 and were in effect during the period in controversy, reading as follows:

(1) Deliver to a coal mine cars which may be individually owned by that coal mine, and foreign cars, particularly assigned to such mine. If either or both of such cars do not come up to the *pro rata*, the mine is entitled to have given to it, the difference between them and the just allotment to which it is entitled, treating the above-mentioned cars just as if they were company coal cars.

(2) Get your fuel first. If in getting your fuel you take the total output of a mine, you are entitled to that total output and the necessary cars to get it even though such action might give such mine more than its allotment. If you take less than the mine's output, count it in as part of the cars that such mine got, the company fuel cars and only give to it for commercial shipments any difference that might exist between the number of cars it loaded with company fuel and the full *pro rata* it was entitled to.

(3) Treat fuel cars of this company, the regular equipment of coal cars of the company, the cars of other roads sent this company for fuel, and the private or individual cars of mining operators all on the same basis in so far as the distribution of car service by the carrier is concerned.

(4) Arrive at the percentage of cars to which each mine is entitled solely by the physical capacity of the mine to furnish coal for shipment.

A rating of 500 tons was equivalent to 12 cars a day. Complainant asserts that orders were placed with defendant's agent at Millstadt each night for cars to be furnished the following day, and that the number of cars supplied was much less than its pro rata or proper percentage thereof, whereas certain competing mines were favored by preferential distribution of available cars.

During the period under consideration there was a great demand for coal at high prices. From the middle of October until the last of March the demand was 100 per cent greater than the supply. Complainant insists that with a fair proportion of cars it could have mined and marketed all of its coal at the most favorable prices but that because of the discrimination it was compelled to sell at periods when prices were much lower.

Out of 8 acres of coal accessible for mining about 34,000 tons were mined and shipped. Due to slides, approximately 8,000 tons were lost. Complainant says that during the first part of the period it could have loaded 500 tons a day; that with a regular car supply it would have been possible to have loaded between 10,000 and 12,000 tons a month working about 22 days a month. Frequently complain-

ant's mine was closed down, which occasions were attributed to the alleged unfair distribution during the car shortage.

On defendant's lines there were nine mines, including two quarries and a gravel pit. In the distribution of coal cars defendant deducted a sufficient number of cars for company fuel, approximately 60 each day and divided the remainer of the available supply among the various mines. Complainant's charge of unjust discrimination lies in the fact that defendant disregarded its coal-car supply rules. It asserts that cars furnished other coal mines for company fuel on some days exceeded their pro rata share and the excess was not counted in the monthly distribution account, although such mines were not whole-output company-fuel mines and the number of cars furnished those mines for commercial coal was in no way governed or affected by the number of cars furnished at various times for company fuel. It was also shown that from December 1, 1916, to March 1, 1917, during which period defendant used lump coal instead of mine-run coal for fuel purposes, additional cars were supplied to those mines furnishing company coal in which to load the screenings produced by the lump-coal preparation. These mines shipped commercial as well as company fuel and the screenings were sold commercially. The cars furnished for the loading of screenings were treated as cars for company coal and were not accounted for in the distribution of cars for commercial coal. Complainant says that during this period the market price of screenings had reached a comparatively high level and the favored mines were unduly preferred by receiving more equipment than their ratings warranted, whereas complainant was compelled to operate with less than its pro rata. In fact, complainant states, that when it was loading coal for the Missouri, Kansas & Texas Railway, during the period in controversy, and needed cars for screenings, defendant refused to supply them, thus compelling complainant to hold over the Missouri, Kansas & Texas cars unloaded for several days at a time until sufficient system equipment could be secured to accommodate the screenings.

The quarries on the defendant's line were, for car-distribution purposes, considered and served as coal mines. Complainant asserts that the quarries, on numerous occasions, were furnished coal cars for shipping ballast used by defendant, which cars were not counted against the quarries, having been supplied by defendant in addition to the quarries' full pro rata share of equipment. To rebut defendant's claim that these cars were special equipment and not suitable for coal shipments, complainant testified that it used some of these cars during a short period, under special permission from defendant.

Complainant therefore contends that defendant subjected it to unjust discrimination and undue prejudice in failing to apply to it the same bases of rating and rules of car distribution which contemporaneously were in effect and applied to other competing shippers of coal; in failing to treat the mines shipping company fuel and commercial fuel at the same time as commercial mines; in preferentially supplying such mines with equipment over and above the pro rata to which they were entitled under a fair distribution of the total cars available; and in failing to charge the quarries on defendant's line with all cars furnished them, including the special cars, known as ballast cars, in addition to their share of available equipment.

For the defendant it is contended that complainant was not entitled to a rating of 500 tons a day; that the conditions of its operations were such as to make it impossible to ascertain and abide by a rating on the same basis as the other mines, all of which were shaft mines; and that complainant did in fact receive all of the cars to which it was entitled during this period of acute car shortage.

The average number of cars on defendant's line from September 1, 1916, to June 12, 1917, including foreign-line and system cars, suitable for coal traffic, was about 50 per cent of the total number of such cars which it possessed. By months the available supply was as follows:

	Per cent.		Per cent.
September, 1916	64.0	March, 1917	50.0
October, 1916	55.2	April, 1917	55.0
November, 1916	49.7	May, 1917	51.6
December, 1916	38.3	June, 1917	46.7
January, 1917	44.2		
February, 1917	50.2	Average	50.5

At this time the defendant was using 60 carloads of coal per day for locomotive fuel, which it obtained from mines in Illinois.

Defendant's car-distribution rules were not followed in supplying complainant's orders for equipment nor was the rating of 500 tons regarded. Defendant's car distributor, who had held that position for about 12 years, testified that his intimate familiarity with the actual daily loadings of all the mines enabled him to judge their capacity from past performances; that he took into consideration complainant's actual performance from day to day, and disregarding its nominal rating, supplied it with a fair share of available cars.

In distributing cars the number necessary to accommodate defendant's fuel supply was first deducted from the available total and the remainder pro rated among the various mines shipping commercial coal. Defendant does not dispute the fact that during most of the

period it failed to charge against the mines, shipping company fuel, cars which it furnished in excess of their pro rata, even though those mines were not strictly whole-output company-fuel mines. In this regard defendant's rule 2 was not adhered to, inasmuch as it did not and should not contemplate the total output of one day as constituting that mine a whole-output company-fuel mine. In reply to complainant's contention that these mines, being in fact commercial mines, received more than their proportion, which thereby reduced the available supply for other commercial mines, defendant urges that complainant was furnished all the cars it could load and ship under conditions surrounding its operations.

Between December 11, 1916, and February 19, 1917, defendant used lump coal for fuel which, it states, was approximately 25 per cent more efficient than mine-run coal. The mines from which defendant obtained its fuel supply agreed to furnish lump coal at the same price as mine-run, but in order to effect the arrangement defendant was obliged to supply the necessary cars to accommodate the screenings. In screening coal a mine must have at least 2 cars under its tipple, one to take the lump coal and the other the screenings. It was estimated that 3 tons of mine-run produced 1 ton of screenings; in other words, 3 cars of mine-run produced 2 cars of lump coal and 1 car of screenings. Defendant argues that inasmuch as the use of lump coal required a less number of cars for its daily fuel use, it was not only benefited, but the public was correspondingly benefited through a greater number of cars made available for commercial coal. Defendant's daily use of 48 cars during the time it used lump coal necessitated furnishing the mines 24 empty cars for screenings, a total of 72 cars, or 12 more than were used for mine-run coal. Defendant furnished 209 cars for screenings on the days when complainant ordered cars. Reasoning that one-half of those cars would have been placed in company use if mine-run coal had been used, defendant submits that but 105 cars would have been available for general distribution; that had complainant received the same proportion thereof that it received of other cars, that proportion would only have been about 6.5 cars, and that in view of the extreme irregularity of complainant's production that quantity was practically insignificant. The practice of furnishing cars for screenings was discontinued on February 19, 1917, because of dissatisfaction among other mine operators, including complainant, who shipped only commercial coal.

The special cars furnished the quarry for the loading of ballast were of the gondola type, with drop bottom and false ends, which sloped toward the center of the car to facilitate self-unloading. It is asserted that these cars were used for no other purpose and were

not permitted to leave defendant's line. Notwithstanding the supply of ballast cars, it appears that the quarry's total number of cars was less than its pro rata, with the exception of one month.

There is an unaccountable discrepancy between defendant's and complainant's records of cars ordered and furnished complainant during the period, and it is impossible from the evidence to reconcile the differences. Defendant offered statements which exhibit 1,910 cars ordered and 761 furnished. Complainant's records exhibit 1,583 cars ordered and 720 received. At complainant's instance defendant filed of record subsequent to the hearing a statement identified as complainant's exhibit, which shows 1,876 cars ordered and 765 received. No exception to these figures was taken by complainant.

Competing mines, such as the Willis mine and the Moffatt mine, complainant says received 4,228 and 2,482 cars, respectively. These figures were offered, not as absolutely correct, but as compiled from the best information available to complainant, to indicate the general relative situation. The ratings of those mines were 1,200 tons and 800 tons per day, respectively.

In daily apportioning the available cars, defendant's car distributor ascertained the number of cars at each mine not loaded and left over to the succeeding day. The left-over cars at the respective mines were considered as available to them for loading and only such additional cars were actually furnished as were necessary to complete the number ordered for the succeeding day. With respect to complainant's mine the car distributor, in consideration of his experience and the past performance of that mine, first determined the number of cars complainant should reasonably have and then furnished the difference between that number and the number of empty cars which remained over on complainant's siding. It is shown that on the majority of days some cars were left over unloaded, ranging from 1 to 12 cars, the prepondering range, however, being from 1 to 6.

In support of its contention that complainant was unable to produce coal commensurate with its rating of 500 tons, or, in fact, load the number of cars ordered or furnished, defendant shows that frequent interruptions were occasioned at the mine by the slides of earth, necessitating delays of more or less lengthy intervals. In December, 1917, one slide caused a delay of about 20 days, during which time no cars were ordered. Again in the latter part of March during a period of 7 or 8 days no cars were ordered, by reason of cessation of operations, owing to a slide. Other instances of equal or less duration with resultant interruptions were testified to.

Complainant's large stripping shovel during the period in question was in bad condition, frequently needing repair. A supply of parts was not kept and occasional delays were experienced awaiting the

arrival of repair materials. The water supply for the boilers of the large and small shovels was secured at some distance from complainant's mine. During the winter months the performance of the mine was frequently retarded by water freezing in the conveying pipes.

Other incidents were emphasized such as the accumulation of water in the pit, the difficulties of moving the two shovels past each other at the end of a cut before starting back in the opposite direction, usually requiring several days; also delays arising through the derailment of pit cars moving to and from the tippel, 3½ miles. Aside from the obstacles peculiar to complainant's mine, it was testified by a mining expert that stripping mines, in general, encounter many more delays than shaft mines, by reason of inherent disadvantages in operations.

Complainant stated that, prior to the period of car shortage, it had no difficulty in disposing of all the coal it was able to load. Defendant compares complainant's performance during the corresponding period of the years 1915–16, when the car supply was plentiful, with its performance during the period in controversy. In 1915–16 complainant loaded 695 cars, working 107 days. In 1916–17 it loaded 729 cars in 117 days. The average loading per working day is shown to have been 6.49 cars during the former period and 6.23 cars during the latter period. Defendant's exhibits display not only a noticeable irregularity of loading during the 1915–16 period, but a wide variation in the number of cars loaded on different days and on consecutive days. During a period of 20 days in September, 1915, with the exception of 1 carload, no shipments at all were made. Another interval of 18 days is found, and others of from 4 to 6 days. Defendant urges that this situation, existing at a time of adequate supply, together with the evidence of complainant's difficulties of operation during the period involved in the complaint plainly indicate that complainant's mine was not physically capable of producing coal in any greater quantity than was actually shipped, regardless of the prevailing car shortage.

Complainant has ceased operating and is no longer interested in defendant's rules and practices. Nevertheless, it is opportune to comment that defendant's custom in treating some mines as whole-output company-fuel mines for a few days without charging against them cars in excess of their pro rata and then placing such mines on a commercial basis, alternating repeatedly within the same season or period of car shortage was pregnant with the possibility, if not probability, of unjust discrimination against other operators in the same field. The Commission said in *Royal Coal & Coke Co.* v. *S. Ry.*, 13 I. C. C., 440:

Where there is an inadequate supply of coal cars carriers should allot to each mine its proportion estimated upon justly ascertained capacity and without regard to whether the mine furnished partly fuel and partly commercial coal, or commercial coal only.

The equitable distribution of coal cars during times of unusual demand is a difficult problem. Mine ratings should necessarily be based upon the ability to produce coal, and the commercial capacity to dispose of it. If these elements fluctuate from time to time the ratings should, periodically, be changed. Complainant's rating remained at 500 tons per day throughout the period. It was, however, the only stripping mine on defendant's line, the rest being shaft mines, and its performance was so irregular and varied so greatly from time to time, with recurring suspensions of operations, that its rating served as an unreliable index of what it might produce from day to day. The ultimate question in this case can not, under the circumstances, be determined by ascertaining whether defendant did or did not strictly follow the correct rules or the rules then in effect regarding the other mines, but rather, whether or not complainant received its fair share of available equipment.

The peculiar situation disclosed by the facts in this record present another of the perplexing problems of car distribution. Our findings herein must be viewed as determining only this case and are not to be construed as applying generally to car distribution questions.

McCHORD, *Commissioner:*

The above is in substance the report of the examiner as served upon the parties in this proceeding. Exceptions were filed by the complainant and the case was submitted after oral argument before us.

We have considered the exceptions taken to the proposed report and have made such changes therein as the facts warrant. The record does not show that the complainant could have used more cars than those actually furnished or that in the distribution of cars, based upon the physical capacity to produce, the allegation of unjust discrimination or undue preference has been sustained. An order will therefore be entered dismissing the complaint.

No. 10502.

CURTIS, BOOTH & BENTLEY COMPANY
v.
DIRECTOR GENERAL AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY.

Submitted June 23, 1919. Decided December 10, 1919.

Rate of 40 cents per 100 pounds on window glass, in carloads, from Fredonia, Kans., to Okmulgee, Okla., found unreasonable and unduly prejudicial to the extent that it exceeded or may exceed the rate from the same point to Muskogee, Okla., and also found in violation of section 4 of the act to regulate commerce. Relationship of rates prescribed for the future. Reparation awarded.

H. C. McCord for complainant.

James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of doors and window sash at Okmulgee, Okla. By complaint filed February 24, 1919, it alleges that defendants' rate on window glass, in carloads, from Fredonia, Kans., to Okmulgee, Okla., was and is unreasonable and unduly prejudicial and in violation of the long-and-short-haul rule of section 4 of the act to regulate commerce. The prayer is for reparation on three shipments, made February 28 and March 1, 1917, and reasonable and nonprejudicial rates for the future. Rates will be stated in cents per 100 pounds, and are those in effect on June 24, 1918, unless otherwise noted.

Fredonia is located in southeastern Kansas and is served by the St. Louis-San Francisco, the Atchison, Topeka & Santa Fe, and the Missouri Pacific railways. The first two will be referred to as the Frisco and Santa Fe, respectively. Okmulgee is in northeastern Oklahoma, and is served by the Frisco and the Okmulgee Northern Railway.

The points alleged to be unduly preferred are Tulsa, Okla., intermediate to Okmulgee over the Frisco and 45 miles north thereof; Sand Springs, Okla., about 7.5 miles west of Tulsa; Muskogee, Okla., 39 miles east of Okmulgee, and to which Okmulgee is intermediate

over the Frisco; and other points in Oklahoma and Arkansas. In disposing of the issue of undue preference the report will be confined to the rates to Tulsa and Muskogee, as no evidence was introduced with a view to showing that Sand Springs and other points in the states named were unduly preferred.

In February and March, 1917, three shipments, weighing in the aggregate 146,420 pounds, were forwarded from Fredonia to Okmulgee over the Frisco. Charges of $585.68 were collected at the applicable rate of 40 cents. It appears that the shipments consisted of "common" window glass; the evidence introduced and the rates discussed were directed to this commodity.

Complainant contends that the rate applied was unreasonable to the extent that it exceeded 20 cents, and that the rate for the future should not exceed 25 cents. The rate assailed is compared with rates from Fredonia to Tulsa and Muskogee, and Waco, Tex., and from Okmulgee, at which point window glass is also manufactured, to Fredonia and Kansas City and St. Louis, Mo. The distances and rates from and to the above points are shown in the table below. The carload rating on window glass in the western classification is fifth class, and the fifth-class rates are also shown.

From—	To—	Miles.	Window-glass rate.	Fifth-class rate.
Fredonia	Okmulgee	[1] 230	40	43
Do	Tulsa	[2] 185	20	36
Do	Muskogee	[3] 270	20	36
Do	Waco	520	[4] 30	[4] 70
Okmulgee	Fredonia	230	20	43
Do	Kansas City	302	20	43
Do	St. Louis	469	22	53

[1] Over the Frisco. Over Santa Fe and Frisco 180 miles.
[2] Over the Frisco. Over Santa Fe, 135 miles.
[3] Over the Frisco. Over M. P. and M. O. & G., 163 miles.
[4] Also applies to other points in the Dallas-Fort Worth group.

An examination of the tariffs discloses the following situation with respect to rates from Fredonia. On November 28, 1913, a commodity rate of 30 cents was established to Okmulgee, on which date the commodity rates to Tulsa, Muskogee, and Waco were 27, 30, and 35 cents, respectively. On February 2, 1916, the rate to Okmulgee was increased to 40 cents, without change in the rates to the other points. On September 19, 1916, the rate to Waco and other points in the Dallas-Fort Worth group was reduced from 35 to 30 cents. On September 24, 1916, the rates to Tulsa and Muskogee were reduced to 20 cents.

The increase in the rate to Okmulgee and the decreases in the rates to Muskogee and to points in the Dallas-Fort Worth group resulted in departures from the long-and-short-haul rule of section 4 of the

act. The reduction in the rate to Tulsa to 20 cents on September 24, 1916, also resulted in a departure from the provisions of section 4, as the aggregate of the intermediate rates to and from that point was 37.5 cents. These departures were not protected by fourth section applications or otherwise authorized, and must be promptly corrected. Also, the combination on Muskogee, the more distant point, was 4 cents lower than the rate to Okmulgee. The spreads between the rates to Okmulgee on the one hand and Muskogee and Waco on the other and between the rate to Okmulgee and the combination rates on Tulsa and Muskogee were widened by reason of the increases which became effective on June 25, 1918, under General Order No. 28 of the Director General of Railroads.

Little evidence was submitted by defendants with respect to rates from Fredonia to points in Oklahoma and Texas. The witness for defendants testified that, with the exception of the three shipments to complainant, there had been no movement of window glass from Fredonia to Okmulgee since about 1915, and that probably there would be no future movement. Under these circumstances, it is contended, the rate applied was proper and the present rate basis should not be changed. The volume of movement from Fredonia to Tulsa, Muskogee, and Waco was not shown, and no evidence of any real value was introduced to justify the lower rates to those points or the disturbance in the rate relationship which formerly existed. It was testified that low rates were established from Oklahoma points to Kansas City and St. Louis for the purpose of assisting the Oklahoma producers in meeting competition of producers located east thereof, and that the rate from Okmulgee to Fredonia was made the same as that to Kansas City because Fredonia is in the Kansas City group.

In *Bute Co.* v. *A., T. & S. F. Ry. Co.*, 52 I. C. C., 380, we observed that the commodity rates on common window glass, in carloads, from Kansas producing points to certain points in Texas approximated class D. At the time of movement the class D rates from Fredonia were 23 cents to Tulsa and Muskogee, 24 cents to Okmulgee, and 41 cents to Waco.

The record shows that the rate assailed is out of line with the rates from Fredonia to other points in this general territory. As shown in the above table, the rate on window glass from Fredonia to Okmulgee is about the same as the fifth-class rate, whereas to the other points the window-glass rates are much lower than fifth-class. Fredonia and Okmulgee are grouped with other producing points in Kansas and Oklahoma with respect to rates to points in the Dallas-Fort Worth group, and the rate from Fredonia to Okmulgee is higher than the group rate to the Texas points.

Upon the facts of record we find that the rate assailed was, and for the future will be, unreasonable and unduly prejudicial to the extent that it exceeded or may exceed the rate on the same commodity contemporaneously maintained from Fredonia to Muskogee; that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged in the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $292.84, with interest.

An appropriate order will be entered.

No. 9702.[1]

MEMPHIS-SOUTHWESTERN INVESTIGATION.

Submitted October 1, 1919. Decided December 2, 1919.

1. A maximum distance scale of class rates prescribed for distances not in excess of 350 miles between points in Arkansas, Oklahoma, and southern Missouri.
2. Existing class rates between Memphis, Tenn., and all points on class A railroads in Arkansas are unreasonable and unduly prejudicial to Memphis to the extent that they exceed by more than reasonable bridge tolls the corresponding class rates contemporaneously applicable for like distances to intrastate traffic in Arkansas. Reasonable bridge tolls prescribed.
3. Existing class rates from Memphis to points in southern Missouri as defined in the report are unreasonable and unduly prejudicial to Memphis to the extent that they exceed by more than reasonable bridge tolls the corresponding class rates contemporaneously in effect from St. Louis, Mo., to the same points for like distances.
4. Class rates from Memphis to points in Arkansas are unduly prejudicial to Memphis to the extent that they exceed by more than reasonable bridge tolls the corresponding rates for like distances from St. Louis.
5. Rates and practices of the Missouri Pacific with respect to the concentration of Arkansas cotton at Memphis not shown to be unduly prejudicial or otherwise unlawful, but the rates for back hauls on cotton to compress points should be published on a uniform basis.
6. Practice of the Missouri Pacific and the Cotton Belt with respect to charges for the delivery of cotton at Memphis and at East St. Louis, Ill., subjects Memphis to undue disadvantage.
7. Class rates from St. Louis to points in southern Arkansas are unreasonable and unduly prejudicial to those points and unduly preferential of Pine Bluff and Little Rock.
8. Class rates from Natchez, Miss., to certain points on class A railroads in Arkansas are unreasonable and unduly prejudicial to Natchez and unduly preferential of Memphis and Little Rock.

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[1] The report embraces also the following complaints: No. 7304, City of Memphis *v.* Chicago, Rock Island & Pacific Railway Company et al.; No. 9927, Railroad Commission of Arkansas *v.* Arkansas Central Railroad Company et al.; No. 6119, Public Utilities Commission of Kansas *v.* Alabama & Vicksburg Railway Company et al.; No. 6119 (Sub-No. 1), Wichita Business Association *v.* Same; No. 6119 (Sub-No. 2), Hutchinson Traffic Bureau *v.* Same; No. 6228, Topeka Traffic Association *v.* Same; No. 10084, Natchez Chamber of Commerce *v.* Natchez & Southern Railway Company et al.; No. 10085, Oklahoma Traffic Association *v.* Atchison, Topeka & Santa Fe Railway Company et al.; No. 9886, Chamber of Commerce of Monroe (La.) *v.* Arkansas & Louisiana Midland Railway Company et al.

Heard therewith were a large number of fifteenth section applications filed by individual carriers, but subsequently withdrawn at the instance of the Director General of Railroads; also numerous fourth section applications hereinafter listed.

9. Class rates from Monroe and Shreveport, La., to points on class A railroads in southern Arkansas are unreasonable, unduly prejudicial to Monroe and Shreveport and unduly preferential of competing points in Arkansas to the extent that they exceed for like distances the corresponding class rates applicable to intrastate traffic in Arkansas.
10. Allegation that class rates from groups of origin in western trunk line territory to Fort Smith, Ark., are unduly prejudicial to that point and unduly preferential of points in eastern Oklahoma, not sustained.
11. Class and commodity rates from certain territories in the southeast to points in Arkansas are unduly prejudicial to Arkansas and unduly preferential of certain points in Oklahoma.
12. Reasonable maximum class rates approved between Memphis, Tenn., and Kansas City, Mo.
13. Fourth section applications by which the carriers parties thereto seek authority to continue lower class and commodity rates to and from competitive points along the Mississippi River, St. Louis and south, than the rates to and from intermediate points, denied. Other fourth section applications considered and appropriate findings made.
14. Reasonable class rates established from New Orleans, La., to points in Arkansas, Oklahoma, and Missouri River cities.
15. Class and commodity rates from New Orleans to interior points in eastern Kansas are, under present conditions, unduly prejudicial to those points and unduly preferential of Kansas City. A proper alignment suggested.
16. Differentials over Kansas City approved for constructing class rates to Omaha from New Orleans. Differentials over Omaha also approved for constructing class rates from New Orleans to Sioux City.
17. Proposed increased class rates from St. Louis to points in Oklahoma not justified.

T. K. Riddick and *Jas. S. Davant* for City of Memphis and Memphis Freight Bureau; *Edw. A. Haid*, *C. D. Mowen*, *T. E. Wood*, *H. R. Wilson*, *Walter G. Brasher*, *Hamilton Moses*, and *Tom W. Campbell* for Corporation Commission of Arkansas, Fort Smith Traffic Bureau, Little Rock Chamber of Commerce, and Pine Bluff Commercial Club; *A. E. Helm* for Public Utilities Commission of Kansas; *W. H. Humphrey*, *H. L. Bennett*, and *P. H. Nolan* for Corporation Commission of Oklahoma; *Victor E. Wilson* and *U. G. Powell* for Nebraska State Railway Commission; *C. B. Bee* for Public Service Commission of Missouri; *Walter Condran*, *W. F. Parsons*, and *A. T. Sindel* for Iowa Board of Railroad Commissioners; *A. D. Beals* and *H. M. Gregory* for Southern Arkansas Wholesale Grocers' Association and Arkansas Jobbers and Manufacturers Association; *B. F. Martin* for Natchez Chamber of Commerce; *H. J. Fernandez* for Monroe Chamber of Commerce; *W. V. Hardie* and *H. C. McCord* for Oklahoma Traffic Association and Oklahoma State Shippers Association; *Edgar Moulton* and *Carl Giessow* for New Orleans Joint Traffic Bureau; *R. D. Sangster* for Kansas City Chamber of Commerce; *C. E. Childe* for Omaha Chamber of Commerce; *P. W. Coyle* and *H. R. Brashear* for St. Louis Chamber of Commerce; *W. P.*

Huston for Wichita Board of Commerce; *W. H. Young* for Nebraska-Iowa Wholesale Fruit Dealers Association; *A. C. Slaughter* for Iowa Fruit Jobbers Association; *Walter S. Whitten* and *John J. Ledwith* for Lincoln (Nebr.) Commercial Club; *L. S. McDonald* for Arkansas Traffic Association; *Charles S. Bowling* for Little Rock Cotton Exchange; *A. R. Bragg* for Merchants Freight Bureau, Little Rock, Ark.; *W. M. Taylor* for Pine Bluff Traffic Bureau; *B. S. Craig* for Hutchinson Traffic Bureau; *E. H. Hogueland* for Topeka Traffic Association; *J. P. Haynes* for Traffic Bureau of Sioux City Commercial Club; *M. W. Martin* for Helena Traffic Bureau; *S. C. Bates* for Jobbers & Manufacturers Association, Springfield, Mo.; *J. W. Reading* for Stuttgart (Ark.) Business Men's Association; *Laurence F. Daspit* for Shreveport Chamber of Commerce; *E. H. Draper* for Iowa-Nebraska Wholesale Grocers Association; *H. F. Sundberg* for Chamber of Commerce of Cedar Rapids, Iowa; *A. B. Combs* for Marshall Oil Company; *E. M. Gleason* for Texarkana Freight Bureau; *E. G. Wylie* for Greater Des Moines Committee; *C. O. Dawson* for Ottumwa Commercial Club; complainants, protestants, and interveners.

W. F. Dickinson, *J. R. Turney*, *H. G. Herbel*, and *N. W. Proctor* for United States Railroad Administration.

W. F. Dickinson, *J. R. Turney*, *F. A. Leland*, *Arthur E. Haid*, *Alex M. Bull*, *D. P. Connell*, *Fred G. Wright*, *J. M. Souby*, and *C. W. Owen* for other defendants.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner:*

In these proceedings the proposed report of the examiner was served upon the parties; exceptions thereto were filed; and oral argument was had before the Commission. In the following report there are incorporated substantial excerpts from the examiner's proposed report where the recitals or findings are approved and adopted by the Commission.

The proceedings are the outgrowth of previous cases, in particular *City of Memphis* v. *C., R. I. & P. Ry. Co.*, 39 I. C. C., 256; 43 I. C. C., 121; 45 I. C. C., 487. The principal allegation therein was that the interstate class and commodity rates between Memphis and points in the state of Arkansas were unreasonable and unduly prejudicial to Memphis and to interstate traffic to and from that point and unduly preferential of Arkansas shippers and of intrastate traffic within the state of Arkansas. We held that the evidence showed conclusively that the relationship between the state class and commodity rates within Arkansas and the class and commodity rates between Memphis and Arkansas points was unduly prejudicial to Memphis and constituted a burden on interstate commerce, in that

for equal distances the state rates were materially lower than the interstate rates. *City of Memphis* v. *C., R. I. & P. Ry. Co.*, 39 I. C. C., 256. In a supplemental report, 43 I. C. C., 121, we prescribed a maximum distance scale of class rates between Memphis and the eastern part of the state of Arkansas, and held that the interstate rates should not exceed the intrastate rates by more than reasonable bridge tolls which we prescribed. When the prescribed scale was to be applied fourth section difficulties were encountered, due to the fact that our scale made the rates from Memphis to intermediate points in Arkansas substantially higher than the rates from Memphis to Kansas City, Mo., and other points beyond in Missouri, Kansas, and Oklahoma. This complication prompted the carriers to suggest increased rates from Memphis to the Missouri River and to the intermediate territory to a basis more nearly in accord, distance considered, with that prescribed between Memphis and points in Arkansas. Appropriate applications were filed under the fifteenth section of the act, as amended, for permission to file the increased rates. Inasmuch as the class rates between Memphis and the Missouri River cities applied over certain routes through Arkansas, eastern Oklahoma, and southern Kansas, the carriers suggested that a proper realignment of the Memphis-Missouri River rates could not be made without providing a uniform scale of class rates to apply throughout that general territory.

By order dated May 21, 1917, we entered an order instituting an investigation upon our own motion under Docket 9702, *Memphis-Southwestern Investigation*, into the reasonableness and the discriminatory character of the interstate class and commodity rates between Memphis and points in the state of Arkansas, "as well as contiguous territory in Missouri and Oklahoma," principally with a view to determining whether the rates finally prescribed as just, reasonable, and nondiscriminatory from Memphis to points in eastern Arkansas could with propriety be extended not only into Arkansas as a whole, but into contiguous territory in the two aforementioned adjoining states.

The carriers confronted another complication arising from the fact that the rates between Memphis and Arkansas and Louisiana bore to those from St. Louis a fixed relationship which was prescribed by the Commission in *Memphis Freight Bureau* v. *St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224. The preservation of this differential adjustment is alleged to have necessitated proposed increases in the rates from St. Louis corresponding with those proposed from Memphis. Appropriate fifteenth section applications were accordingly filed, proposing to increase the St. Louis rates, not only to points in Arkansas and Louisiana, but to points in Oklahoma as well.

This adjustment, in turn, necessitated further increases from the territory east of the Mississippi, inasmuch as the rates from St. Louis to the southwest serve as the basis of the whole southwestern rate structure, the rates from so-called "defined" territories, embracing points in official classification territory and in the southeast, being constructed by adding certain fixed differentials to the St. Louis rates. Thus it came about that a proceeding which originally involved only the rates from Memphis to points in Arkansas has been greatly extended in scope.

Another group of fifteenth section applications proposed to make substantial increases in class rates and in certain commodity rates between the Gulf ports and Missouri River cities. These applications were based on our conclusions in *Rates from New Orleans and Galveston*, 44 I. C. C., 727, and our Fourth Section Order No. 6704, in which the southwestern lines were denied authority to continue lower domestic and import rates via the direct lines from New Orleans and Galveston to Kansas City and other Missouri River points than to intermediate points in Kansas. The carriers treated the report and order in the case cited, taken in connection with the report in *Public Utilities Commission of Kansas* v. *A. & V. Ry. Co.*, 44 I. C. C., 743, as warranting increases in the existing rate structure from the Gulf ports to the Missouri River cities and related territories. Fifteenth section applications were filed accordingly. Increases in rates were likewise proposed from the Gulf ports to points intermediate to the Missouri River in Arkansas, Missouri, Oklahoma, and Kansas. One of the applications proposed to increase the class rates from the Gulf ports to the Colorado common points and to rate groups north of the Missouri River cities.

In addition to the issues above outlined there are others presented in formal complaints, listed above, that were consolidated with this investigation. There are also numerous fourth section applications assigned for hearing in connection with this proceeding, some of which are passed upon in this report.

Subsequent to the early hearings in this investigation, but prior to the last hearing, all the fifteenth section applications embraced in the proceeding were withdrawn at the instance of the Director General of Railroads. These applications are therefore not strictly in issue. It is practically impossible, however, to pass upon certain issues raised by the several formal complaints if the rate adjustments proposed in the fifteenth section applications are ignored. Some of the applications represent essentially the carriers' defense to the complaints or embody their suggestions as to the appropriate remedies. The scope of the proceeding will be confined largely to

the issues framed by the formal complaints. The issues to be considered in this report may be defined as follows:

1. The reasonableness and the alleged prejudicial character of the interstate class rates between Memphis on the one hand and all points in the state of Arkansas on the other, as compared with the Arkansas intrastate rates, this issue being raised by formal complaint filed by the city of Memphis. In connection with this issue it is believed proper to consider evidence addressed to proposals of the carriers with respect to the level of the class rates, both state and interstate. The determination of this issue involves consideration of the proper bridge tolls to be imposed for the Mississippi River crossing at Memphis.

2. The reasonableness and the alleged prejudicial character of present interstate class rates from Memphis to points in southern Missouri as compared with the rates from St. Louis to the same points. Issue raised by formal complaint of the city of Memphis.

3. The alleged prejudicial character of present class rates from Memphis to points in the state of Arkansas as compared with the corresponding rates from St. Louis to the same points. Issue raised by formal complaint of the city of Memphis. In connection with this issue it is believed proper to consider evidence addressed to proposals of the carriers with respect to the proper level of the class rates from St. Louis to points in Arkansas.

4. The reasonableness and alleged prejudicial character of class rates from St. Louis to points in southern Arkansas as compared with corresponding rates to Little Rock and Pine Bluff. Issue raised by intervention of Southern Arkansas Wholesale Grocers Association and Arkansas Jobbers and Manufacturers Association.

5. The reasonableness and propriety of proposed increased class rates between Memphis and Kansas City as compared with rates to and from intermediate points. Issue raised by fourth section applications and fifteenth section applications.

6. The reasonableness and the alleged prejudicial character of interstate class rates from Natchez, Miss., to points in the states of Arkansas and Oklahoma, as compared with the corresponding rates applicable within the state of Arkansas, and with interstate rates between Memphis, New Orleans, and other points, and the destinations in question. Issue raised by formal complaint of the Natchez Chamber of Commerce.

7. The reasonableness and the alleged prejudicial character of interstate class rates from Monroe, La., to points in southern Arkansas as compared with the intrastate class rates contemporaneously applicable from specified Arkansas jobbing points to the same destinations. Issue raised by formal complaint of the Monroe Chamber of Commerce.

8. Alleged prejudicial character of certain rates from designated groups of origin in the southeast and in western trunk line territory to points in Arkansas as compared with corresponding rates to eastern Oklahoma. Issue raised by formal complaint of the Corporation Commission of Arkansas.

9. Reasonableness and alleged prejudicial character of class and commodity rates from New Orleans and related points to Wichita, Salina, Hutchinson, and other interior points in Kansas and Oklahoma as compared with corresponding rates to Kansas City and other Missouri River points. The rates complained of are generally higher than the rates to Kansas City, resulting in fourth section departures. Issue raised by formal complaints filed by the Public Utilities Commission of Kansas, Wichita Business Association, Hutchinson Traffic Bureau, and Topeka Traffic Association, and by fourth section applications.

10. The reasonableness and alleged prejudicial character of class rates and specified commodity rates from New Orleans and related points to Oklahoma City, Shawnee, and El Reno, Okla., as compared with corresponding rates to more distant points in Kansas, such as Wichita, Caldwell, and Arkansas City. Issue raised by formal complaint of Oklahoma Traffic Association, and by fourth section applications.

11. Reasonableness of proposed increased class rates from St. Louis to points in Oklahoma. Issue raised by fifteenth section applications since withdrawn.

12. Numerous fourth section applications, the most important of which are those relating to departures along the Mississippi River, St. Louis, and south.

13. The propriety of establishing a uniform scale of class rates to apply to interstate traffic between Arkansas and southern Missouri, between Arkansas and Oklahoma, and between Oklahoma and Kansas.

No mention is made of commodity rates in the preceding summary except in paragraphs 9 and 10, although commodity rates are attacked in all the formal complaints embraced herein. It is generally agreed that the maximum class rates to be applied should be determined before attempting to realign the commodity rates. A revision of numerous commodity rates is necessary to correct the maladjustment disclosed by the Memphis complaint, but apparently such revision can not well be made in the rates from Memphis without corresponding changes in the rates from St. Louis, Cairo, Natchez, and other river crossings. Revision of the commodity rates from Natchez to stations in Arkansas and Louisiana is now in progress, in accordance with the findings of the Commission in *Natchez Chamber of Commerce* v. *L. & A. Ry. Co.*, 52 I. C. C., 105. It has therefore seemed advisable to defer until later the matter of commodity rates from Memphis and other crossings. Certain northbound commodity rates from the Gulf ports, attacked in formal complaints, will be considered and passed upon, as well as the rates for concentration and delivery of cotton at Memphis.

The formal complaints bring into issue under section 3 of the act to regulate commerce the propriety of the intrastate rates in Arkansas and southern Missouri. The intrastate rates in Kansas are not in issue, and no findings with respect thereto will be made herein.

Appearances were entered for the Corporation Commission of Arkansas, the Public Utilities Commission of Kansas, the Corporation Commission of Oklahoma, the State Railway Commission of Nebraska, and the Public Service Commission of Missouri, and these commissions were represented throughout the greater part of the hearing. The Director General of Railroads was made a party defendant to most of the formal complaints and was represented by counsel.

Numerous commercial organizations as well as individual shippers appeared in protest against certain of the increased rates proposed.

All class rates involved in this proceeding were increased 25 per cent effective June 25, 1918. Unless otherwise specified all rates in this report are those in effect prior to June 25, 1918.

THE PROPOSED UNIFORM SCALE AND ITS TERRITORIAL APPLICATION.

In prescribing the scale of maximum class rates in the second report in the *Memphis Case*, we limited its application, generally speaking, to the eastern part of the state of Arkansas. The additional evidence now submitted shows that any scale of class rates that is applied from Memphis to any part of Arkansas should cover the whole state. The scale of distance class rates prescribed by the Corporation Commission of Arkansas applies uniformly throughout the state, except on so-called differential lines, indicating a recognition by that body of the general similarity of transportation conditions in all parts of the state.

The evidence shows a substantial movement of freight between Memphis and points in western Arkansas. During October, 1916, and January, April, and July, 1917, this movement amounted to 23,174,008 pounds, of which merchandise traffic constituted 3,148,896 pounds. Shippers in Memphis ship their products to Arkansas points in competition with manufacturers located within the state, and Memphis jobbers, who have been confined largely to the eastern section of the state, contend that they could substantially widen their field of operation if they were accorded the relative equality in rates to which they are entitled under the law. That the carriers regard the transportation conditions as sufficiently similar to warrant the application on class A roads of the same scale of class rates throughout the whole state of Arkansas and well beyond the borders thereof is clearly indicated by the evidence.

The evidence shows that in order to secure equal and uniform treatment for interstate commerce the uniform scale should cover the whole state of Arkansas for interstate and intrastate commerce, and that the same scale must, to avoid undue inequalities, be extended to adjacent territory in some of the adjoining states. The uniform scale proposed by the Director General of Railroads was the Shreveport scale plus 25 per cent, otherwise known as the Natchez scale, prescribed by the Commission in *Natchez Chamber of Commerce* v. *L. & A. Ry. Co.*, 52 I. C. C., 105. Substantially higher rates were proposed by the individual railroads. In subsequent references to the Natchez scale it will be understood that the 25 per cent increase is included therein. Where reference is made to the Shreveport scale it is the basic Shreveport scale without the 25 per cent increase. The proposal to apply the Natchez scale involved its use only for distances up to and including 350 miles, for the reason that the scale would materially reduce existing rates for longer distances. Between

Memphis and Arkansas points the maximum haul is approximately 350 miles. It will be remembered that the Natchez scale is now effective (1) between points in Texas common-point territory; (2) between Ruston and Shreveport, La., on the one hand, and Texas common points on the other; (3) between points in Oklahoma and Texas common points, for distances of 500 miles and less; (4) between points in the state of Louisiana west of the Mississippi River; (5) between Mississippi River crossings, Memphis and south, and points in Louisiana west of the Mississippi River, with certain additional charges for crossing the river; (6) between the same river crossings and points in southern Arkansas, with the same additional crossing charges; and (7) between points in Louisiana and points in the extreme southern part of Arkansas. In other words, with respect to certain interstate traffic the Natchez scale now covers, as the result of the Commission's orders, and with certain limitations as to distance, the whole state of Oklahoma, all of Texas common-point territory, all of Louisiana west of the river, and part of southern Arkansas. With respect to intrastate traffic it applies throughout Texas common-point territory and throughout all of Louisiana except the portion lying east of the Mississippi River. The question here involved is whether the Natchez scale should apply throughout Arkansas, Oklahoma, and southern Missouri. Southern Missouri, as the expression is used in this report, refers to what is known as "B" territory, being the portion of the state, roughly speaking, lying south of the Missouri River.

The conclusion is difficult to escape that the differences in transportation conditions generally are not sufficiently marked to necessitate or to warrant different levels of class rates in the general region here involved. The following indicates the traffic density in the states named for the year ended June 30, 1916:

State.	Ton-miles of revenue-freight per mile.	State.	Ton-miles of revenue-freight per mile.
Arkansas	718,632	Texas	[1] 570,268
Oklahoma	635,977	Southern Missouri	[2] 720,796
Louisiana	672,480		

[1] Including differential territory. [2] Average for Missouri Pacific, Frisco, Rock Island, and Cotton Belt.

That the traffic conditions are different in the territory north of the Missouri River is indicated by the fact that the density for Missouri as a whole is 1,044,984; for Iowa, 808,980; and for Minnesota, 1,181,069.

Details bearing upon the differences in transportation conditions in the states named are set forth in Appendix No. 2.. A careful study of the statistics there given, while showing in some instances marked differences in individual items, leads to the conclusion that, con-

sidering all the figures together, a uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana, and common-point territory in Texas. The evidence indicates that Arkansas and Oklahoma and southern Missouri are a homogeneous rate region and that transportation conditions would seem to dictate in general the observance therein of a uniform distance scale.

The present class-rate structure in this territory is a tangled maze of inconsistencies and incongruities, with state rates in numerous instances substantially lower than corresponding interstate rates, with the interstate rates themselves so badly aligned that the states could not, if they would, make the intrastate rates conform to all of them; with exceptions to the classification applying from one river crossing but not from another similarly located; with numerous departures from the long-and-short-haul provision of the fourth section that are without justification under present conditions; with low "jobbers" scales applying from some points and not from others similarly located; with some rates substantially higher than the combination of intermediates; with wide discrepancies in rates for hauls of the same length; with some two-line rates constructed by full combination and others by adding differentials, and still others without adding anything; with so many different sets of class-rate percentages that it would take pages to set out and explain them all; with many rates breaking sharply at state lines without any other reason than the existence of the state boundary. When all of these things are considered in the light of evidence plainly showing that there are, generally speaking, no differences in transportation conditions in this general territory to warrant any difference in rates or practices, the only possible conclusion is that a fairly uniform basis of rates must be established, in order to accord to all shippers and all communities the equality of treatment with respect to interstate commerce to which they are entitled under the law.

In general the Natchez scale, if strictly applied in the territory here under consideration, would (a) substantially reduce rates on the higher classes between Memphis and Arkansas points; (b) make materially lower rates than those approved by the Commission for application between Memphis and Arkansas points in a previous report in one of the cases consolidated with this investigation, 43 I. C. C., 121, as increased 25 per cent; (c) substantially reduce existing rates on the higher classes from St. Louis to Arkansas and Louisiana points; (d) entail such substantial reductions in rates from Memphis, St. Louis, and Kansas City to points bordering on Texas common-point territory as to make it difficult if not impossible to maintain existing rates from those crossings to Texas common points; (e) increase substantially the Arkansas state rates; (f) increase substan-

tially the intrastate rates applicable in Oklahoma and in southern Missouri; and (g) increase materially certain low "jobbers'" rates which carry a substantial volume of merchandise traffic in this territory.

Because of the number of classes involved and the varying volume of traffic moving on each of the different classes it is difficult to compare two scales of class rates in such a way as to tell precisely and concisely how much higher one is than the other as applied to the traffic actually moving in a given territory. One of the witnesses for the carriers made a careful study of the rates from both Memphis and St. Louis to 684 representative stations in Arkansas and Louisiana. This study, the figures supporting which are incorporated in the record, shows that to apply the Shreveport scale from Memphis to the 684 points named would effect a total reduction in rates for the first four classes of 7,590 cents and a total increase of 365.5 cents, making a net reduction of 7,224.5 cents on the four classes to the 684 stations, an average of 10.6 cents for each station and 2.65 cents on each of the four classes. In other words, if the carriers hauled to each of these 684 stations 100 pounds of freight for each of the first four classes, their revenue would be 2.65 cents less on each shipment under the Shreveport scale than it would be under the rates actually in effect on June 24, 1918. On the so-called carload classes, 5 to E, inclusive, there was a net increase of 3,708.5 cents, slightly more than half as great as the reduction for the first four classes. In any such comparison it is important to understand that the movement of freight on the carload class rates in this territory is relatively small, the heavy movement being on the first four classes, and particularly on fourth class.

A like comparison with respect to the rates on the first four classes from St. Louis to the same 684 stations showed a net reduction of 5.5 cents per station and 1.4 cents per class per station. The carload classes show a net increase of approximately 5 cents per class per station.

The following shows to what extent the Shreveport scale would change the rates from St. Louis to typical stations in Arkansas:

From St. Louis to—		Class rates, in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Blytheville, 237 miles.	Class rates	81.0	68.0	54.0	43.0	32.0	35.0	28.0	24.0	20.0	16.0
Do	Shreveport scale	85.0	72.0	59.5	51.0	41.0	44.0	34.0	30.0	25.5	21.0
Little Rock, 349 miles.	Class rates	100.0	85.0	65.0	49.0	37.0	39.0	32.0	27.0	23.0	18.0
Do	Shreveport scale	97.0	82.5	68.0	58.0	46.5	50.5	39.0	34.0	29.0	24.0
Camden, 460 miles	Class rates	120.0	106.0	88.0	69.0	51.0	54.0	46.0	38.0	31.0	25.0
Do	Shreveport scale	109.5	93.0	77.0	66.0	52.5	57.0	44.0	38.5	33.0	27.0
Texarkana, 490 miles.	Class rates	125.0	106.0	88.0	75.0	63.0	66.0	50.0	44.0	38.0	31.0
Do	Shreveport scale	112.0	95.0	78.0	67.0	54.0	58.0	45.0	39.0	33.5	28.0
Fort Smith, 416 miles.	Class rates	110.0	95.0	75.0	59.0	44.0	46.0	39.0	34.0	30.0	25.0
Do	Shreveport scale	104.5	88.5	73.0	63.0	50.0	54.0	42.0	36.5	31.0	26.0

A similar comparison of rates from Memphis to Arkansas points is as follows:

From Memphis to—		Class rates, in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Little Rock, 133 miles	Class rates	70.0	60.0	45.0	36.0	27.0	29.0	22.0	18.0	15.0	12.0
Do	Shreveport scale [1]	65.0	56.0	46.5	39.0	32.0	24.0	20.5	22.0	20.0	17.0
Camden, 223 miles	Class rates	100.0	89.0	74.0	57.0	41.0	44.0	36.0	30.0	25.0	20.0
Do	Shreveport scale [1]	86.0	73.5	61.0	52.0	42.0	45.0	34.5	30.5	28.5	25.0
Texarkana, 293 miles	Class rates	105.0	89.0	74.0	63.0	53.0	55.0	42.0	37.0	32.0	28.0
Do	Shreveport scale [1]	95.0	81.0	67.5	57.0	46.0	50.0	38.5	33.5	29.0	25.0
Fort Smith, 308 miles	Class rates	100.0	85.0	65.0	49.0	39.0	41.0	34.0	29.0	27.0	25.0
Do	Shreveport scale [1]	97.5	83.0	69.0	58.5	47.0	51.0	39.5	34.5	29.0	25.0

[1] With bridge tolls added as per 43 I. C. C., 126.

The preceding comparisons indicate that the application of the Shreveport scale from Memphis and St. Louis would in most instances effect substantial reductions in the rates on first class and second class, and in some instances there would also be reductions in the lower classes. With respect to fourth class, however, and the lower classes the Shreveport scale would generally produce higher rates.

Most of the rates in the preceding comparisons apply for comparatively long distances. The average haul on merchandise traffic in this territory is well within 200 miles. For the shorter distances the Shreveport scale would effect substantial increases over the rates on which the merchandise traffic moves in considerable volume, namely, the "jobbers'" rates and the intrastate rates. This is shown by the following comparisons, all the rates shown being those in effect prior to the 25 per cent increase:

50 MILES.

	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Arkansas intrastate	36.0	30.0	25.0	19.0	14.5	16.0	12.5	11.0	9.0	7.0
Oklahoma intrastate	28.0	23.4	19.0	16.0	13.8	12.9	10.7	9.0	7.2	5.5
Missouri "B" intrastate [1]	30.0	25.0	21.0	18.0	15.0	16.0	13.0	10.5	8.0	6.0
Jobbers' scale [2]	27.0	23.0	19.0	16.0	16.0	16.0	.....	.....	.....	.....
Shreveport scale	36.5	31.0	25.5	22.0	17.5	18.5	14.5	12.5	11.0	8.0

100 MILES.

Arkansas intrastate	46.0	39.0	32.0	26.0	18.5	20.5	16.0	14.0	11.5	9.0
Oklahoma intrastate	43.0	36.4	29.0	25.0	21.3	19.9	16.7	14.0	10.2	7.0
Missouri "B" intrastate [1]	40.0	34.0	28.0	24.0	20.0	22.0	18.0	14.0	11.0	8.0
Jobbers' scale [2]	42.0	36.0	29.0	26.0	25.0	25.0	.....	.....	.....	.....
Shreveport scale	51.5	43.5	36.0	31.0	24.5	27.0	20.5	18.0	14.5	11.0

140 MILES.

Arkansas intrastate	54.0	46.0	38.0	29.0	21.5	24.5	19.0	16.0	13.5	11.0
Oklahoma intrastate	52.0	43.5	35.5	30.4	26.4	24.3	20.3	16.5	13.0	9.5
Missouri "B" intrastate [1]	48.0	41.0	34.0	28.0	24.0	28.0	22.0	17.0	13.0	9.5
Jobbers' scale [2]	53.0	45.0	37.0	32.0	32.0	32.0	.....	.....	.....	.....
Shreveport scale	63.5	54.0	44.5	38.0	30.5	33.0	25.5	22.0	18.0	14.0

[1] Applicable in southern Missouri.
[2] Applicable between points in Oklahoma and points in Arkansas, Missouri, and Kansas.

185 MILES.

	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Arkansas intrastate	64.0	54.0	45.0	35.0	25.5	29.0	22.5	19.0	16.0	13.0
Oklahoma intrastate	61.0	51.0	41.8	35.8	30.9	28.8	23.9	19.5	13.8	11.3
Missouri "B" intrastate [1]	57.0	48.0	40.0	35.0	28.0	31.0	26.0	20.0	15.5	11.5
Jobbers' scale [2]	63.0	54.0	44.0	38.0	38.0	38.0	.....	.....	.....	.....
Shreveport scale	75.0	64.0	52.5	45.0	36.0	39.0	30.0	26.0	22.5	18.5

[1] Applicable in southern Missouri.
[2] Applicable between points in Oklahoma and points in Arkansas, Missouri, and Kansas.

The rates shown in the above comparison carry a considerable volume of merchandise tonnage in the general territory here involved. Of the 184 rates shown in the table the Shreveport scale would increase 181 and reduce 3; and many of the increases are substantial in amount. Particularly important are the fourth-class rates, which carry a larger volume of merchandise traffic than any other class. The Shreveport scale makes an increase of roughly 25 per cent in the fourth-class rates, in addition to the general increase of 25 per cent effective June 25, 1918. The interstate rates from Memphis, however, are considerably higher for corresponding distances than the intrastate rates shown in the foregoing comparisons, and the Shreveport scale would on the whole reduce rather than increase these interstate rates.

The principal witness for the Oklahoma interests offered a comparison of the revenue-producing possibilities of the several scales considered at the hearing, based on a study of the actual movement of less-than-carload traffic on the St. Louis, Iron Mountain & Southern in Arkansas for the month of November, 1913. Applying the several scales to each shipment during that month, and comparing the revenue yielded, the result is as follows: The Kansas-Oklahoma jobbers' scale, which is typical of the jobbers' scales in this territory, and on which the bulk of the merchandise traffic moves between Kansas and Oklahoma, yielded a total revenue of $37,043.90. The Shreveport scale would have yielded $48,664.06, or 31.4 per cent more than the jobbers' scale. This does not take into consideration the subsequent 25 per cent increase. It is believed that this study fairly shows to what extent the interstate jobbers' scales, and in a very general way the intrastate rates, would be increased by the Shreveport scale or the Natchez scale.

Summarizing, we may say: First, that the Shreveport scale, even with bridge tolls added, would substantially reduce interstate class rates for short distances between Memphis and Arkansas points upon which a substantial volume of traffic has moved; it would also reduce rates on the higher classes from St. Louis and Memphis for the longer hauls to southern Arkansas and Oklahoma, thus tending to

break down the adjustment of rates from Mississippi crossings to Texas; and it would increase materially the intrastate rates and jobbers' rates upon which considerable traffic has moved. The jobbers' rates may be regarded as depressed and not affording any fair comparison. Moreover, they are peculiarly constructed, the rates for classes 4, 5, and A being identical. The record also shows that the intrastate rates in this territory have been influenced by the jobbers' rates, and in both Kansas and Oklahoma have conformed rather closely to the jobbers' scale. The volume of intrastate tonnage in this territory is much smaller than the volume of interstate tonnage. For the Rock Island the intrastate tonnage for 1915 and 1916 was only 13 per cent of the total. The evidence does not support a finding that rates lower than the Shreveport scale (or the Natchez scale if the 25 per cent increase is included) should be established between Memphis and Arkansas points. The Shreveport scale was originally designed to apply between Shreveport and Texas common-point territory. It has certain characteristics that unfit it for strict application to the situation here presented. In part because of the Texas rate blanket, and in part because the traffic involved in the *Shreveport Case* was principally short-haul traffic, the scale stops at 500 miles. In the instant case the longer hauls are important, as there is a substantial movement of merchandise traffic on class rates from St. Louis to points as far south as Texas common-point territory.

When the issues herein were enlarged by the consolidation of other complaints, the essence of the matter was still largely a dispute between jobbing or distributing centers, Memphis against Arkansas jobbing points, Memphis against St. Louis, southern Arkansas jobbing points against central Arkansas jobbing points, Natchez, Monroe, La., and Shreveport, La., as against interior Arkansas jobbing points. There has been pressed upon us in argument the contention that there exists an essential difference between the ordinary jobbing or short-distance distributing traffic, moving largely in less-than-carload lots and under the rates assessed on the first four classes, and overhead or long-distance distributing traffic, which moves in carload lots in heavy volume. It is contended that the respective rates on these two contrasted varieties of traffic have little in common, and that it is impossible to appraise the propriety of the rates applicable to the class of traffic first mentioned by reference to those utilized upon the latter. Without attempting here to pass upon the validity of this contention, it will suffice to say that our order confining the application of the uniform distance scale prescribed, except where otherwise specified, to distances not in excess of 350 miles, will apparently suffice to adjust equitably the contentions of the various jobbing points that are before us in

this consolidated proceeding, and at the same time avoid an undue dislocation of the rate structure for longer distances.

It ought to be carefully noted that the uniform distance scale here prescribed is not confined within a radius of 350 miles in those instances where, as in southern Arkansas from St. Louis, it appeared necessary upon formal complaint to prescribe the observance of a maximum distance scale for longer movements.

Another consideration which suggests confining the application of the scale, except where otherwise indicated, to distances not in excess of 350 miles, is the striking contrast in the rates that have long been effective diagonally between four representative corners of this general region. Thus, from St. Louis to Texarkana, for a distance of 490 miles, the basis of rates prior to the 25 per cent advance was $1.25, first class, whereas from Kansas City to Memphis, for a distance of 484 miles, the first-class rate was 80 cents. The corresponding fourth-class rates showed a contrast of 75 cents from St. Louis to Texarkana as against 32 cents from Kansas City to Memphis. It is indisputable that the influence of the Mississippi and Missouri rivers has affected the Kansas City–Memphis rates, and that similar influences have not been operative as between St. Louis and Texarkana. We do not allude to any recent competition by water that has been compelling. There has existed for some years past a rate relationship between Kansas City and Chicago, and Kansas City and Memphis, the first-class rate being the same in both cases. This relationship is alleged to constitute an essential point in the general rate adjustment, east and west bound, involving particularly western trunk line territory. While this relationship last mentioned would not appear to be one whose dislocation or displacement should be impossible, nevertheless its long maintenance as well as the different influences that have operated upon rates along the two diagonals of this region impel us, in a general way, to restrict the application of the distance scale here approved to a 350-mile limit. To approve the rigid application of the scale between Memphis and Kansas City would not only effect staggering increases in present rates, but would to an unfair and unreasonable extent ignore the long-standing relationship between the rates from Memphis, St. Louis, and Chicago to the Missouri River.

Our findings as to the applicability of the uniform distance scale in Arkansas are confined to class A railroads. Carriers of lesser importance, lesser density, and weaker financial standing, are classified into a number of subgroups in that state. It would seem on the whole proper to allow these lower classes of carriers to enjoy rates somewhat in excess of the uniform scale here prescribed; but while this appears to be justified and while the allowances of the Arkansas commission may tentatively be accepted as a working basis in con-

structing rates, we do not find sufficient basis of record to prescribe by order the distance scales that may properly be applied on such lines or on such lines jointly with the class A carriers.

The proposal introduced by the United States Railroad Administration at the last hearing, that the so-called Natchez scale be established for general application within this territory, appeared on argument no longer to carry the approval of certain of the railroad corporations. It was contended by the corporations that the Shreveport basis of the Natchez scale was too low, in that the 23-cent first-class rate prescribed for the initial distance failed to cover the attested terminal costs and carried this error of an insufficient allowance for the initial distance block into every other rate in the scale. The Shreveport scale was also attacked by reason of the alleged inadequacy of the rate of progression, especially for distances in excess of 250 miles.

Some of the carriers whose rates are here in issue have made a detailed study of the cost of handling class freight traffic in the general territory involved in this proceeding and have introduced as part of the evidence herein the results of that study. The cost study made by the carriers, while open to some criticism, has been given consideration. It is not necessary, for the purposes of this case, to make a definite finding as to the soundness of the conclusion reached by the carriers on this subject. The carriers themselves do not make use of the conclusion after reaching it. The scale of class rates proposed by them in this proceeding is decidedly lower for the shorter distances than it would be if based on the results of the study. This seems to follow a consideration of those results, which suggest rates for less-than-carload traffic on so high a basis that admittedly this traffic would be forced to find other means of transportation for the shorter hauls.

The prescription of the 23-cent rate for the initial distance in the Shreveport scale followed after tests had been made at some nine Texas stations in an endeavor to estimate terminal costs. It could not be known with certainty that the average terminal costs at these stations reflected with entire accuracy the terminal costs at some 1,800 other stations. Even though it be admitted that the rates prescribed for the initial block as applied to the weighted percentage of traffic on the first four classes yielded revenue per 100 pounds approximately less by a cent than the terminal costs based upon the nine-station test, it must also be recalled that no express allowance was apparently made for any carload traffic that might move on any of the first four class rates, nor for any traffic that might move at double first class or fractionally higher than the other first four class rates. To these considerations there should be added the fact that in the

Shreveport hearing the carriers contended for a first-class rate of only 24 cents. The Texas state rates were blanketed for distances in excess of prescribed limits. Thus, within common-point territory the first-class rate for 245 miles prevailed upon hauls of the same class of traffic for any greater distance. The allowance of higher rates for distances in excess of those permitted under the Texas state rates constituted a net increment of revenue under our later decision in the *Shreveport Case*. This increment of revenue must be regarded as something of an offset to the alleged inadequate revenue for initial distances under the Shreveport scale. Moreover, while it is conceded that the Commission may not set a maximum scale which fails to cover attested costs, it would not appear unreasonable, in the absence of explicit and comprehensive information, to prescribe a scale approximately equal to indicated costs where the carriers themselves propose a scale differing only by a negligible amount from that prescribed by us, and where by universal admission a scale covering not only all costs but the average overhead charges calculated thereon would drive much of the traffic from the carriers' lines to other avenues of transportation.

On argument our attention was called to the fact that the rate of progression in the basic Shreveport scale, on which the Natchez scale is based, was for distances of over 250 miles, notably less than the mileage rate of progression sanctioned by us in the *Missouri River-Nebraska Case*. The force of this contention must be at least partially conceded; and the scale prescribed herein is accordingly constructed for distances in excess of 250 miles upon a higher rate of progression than that recommended by the examiner in his report.

Evidence was introduced in some detail with respect to the financial condition of 25 representative carriers whose lines serve the southwest. During the period of five years from 1913 to 1917, inclusive, the average return on investment in road and equipment, book value, was 3.82 per cent. For the three relatively favorable years 1915, 1916, and 1917 the average return was but 4.07 per cent. That there has been a marked increase in operating costs since 1913 is not questioned, entirely aside from any of the increased wages authorized by the Director General of Railroads.

The annual standard return of the Missouri Pacific, the Frisco, the Rock Island, the Cotton Belt, the Louisiana & Arkansas, the Missouri & North Arkansas, and the Kansas City Southern exceeded by approximately 33 per cent the actual net railway operating income for 1918, and the standard return for the first four months of 1919 was between four and five times as great as the net railway operating income for those four months.

The certificate of the President with respect to the necessity for the general increase of 25 per cent in freight rates, effective June 25, 1918, it was agreed at the hearing might be considered in evidence in this proceeding to the same extent as if it were made a part of the record.

The foregoing record supports the contention of the United States Railroad Administration and the carriers that the basic scale of class rates in this territory should at least be no lower than the Natchez scale.

We find that the class rates set out in Appendix No. 1 to this report[1] are, for distances not in excess of 350 miles, except as otherwise indicated, reasonable maximum rates for interstate application (*a*) between points in the state of Arkansas and points in the state of Missouri located in what is commonly known and designated as "B" territory; (*b*) between points in the state of Oklahoma and points in the state of Missouri located in what is commonly known and designated as "B" territory; (*c*) between points in the state of Arkansas and points in the state of Oklahoma.

Insuperable difficulties would be encountered if it were attempted to apply the Natchez scale in the territory lying north, generally speaking, of a line drawn east and west through Kansas City and St. Louis, for the reason that the transportation conditions in that territory are decidedly more favorable than in the region to the south. Conditions are well known that have resulted in relatively low rates in the territory lying between the Mississippi and Missouri rivers. The figures for relative density of population traversed by typical lines are set out below:

	Route.	Population by counties.
Memphis to Kansas City	Frisco	888,493
Do	Missouri Pacific	840,978
Chicago to Kansas City	Santa Fe	3,252,780
Do	Burlington	3,339,754
Do	Milwaukee	3,382,908
Chicago to Omaha	North Western	3,196,737

In *Dimmitt-Caudle-Smith Live Stock Commission Co.* v. *R. R. Co.*, 47 I. C. C., 314–315, we said:

The state rates promulgated by the Railroad & Warehouse Commission of Missouri in 1904 were slightly higher, for distances over 50 miles, between points south of the main line of the Missouri Pacific from St. Louis to Kansas City than between points on and north of that line. In *Springfield Traffic Bureau* v. *St. L. & S. F. R. R. Co.*, 29 I. C. C., 600, 605, we declined to apply from St. Louis to Springfield, Mo., in the southern section of the state the same

[1] NOTE.—In all instances where reference is made to Appendix No. 1, or where the rates therein are prescribed, it will be understood that 25 per cent may be added thereto.

scale of proportional class rates, applicable on traffic originating east of the Indiana-Illinois state line, as had been prescribed in the *Warnock Case*, 21 I. C. C., 546, from St. Louis and other Mississippi River crossings to Kansas City, St. Joseph, and other Missouri River cities, on the ground that the traffic density was lighter and the operating conditions less favorable, from St. Louis to Springfield and the southwest, than from Mississippi River crossings to Missouri River cities.

* * * * * * *

The density of traffic, both freight and passenger, is much heavier in the northern than in the southern section of the state. The northern lines handled for the year ending June 30, 1914, 29.5 per cent more freight and 26.6 per cent more passengers, per mile of road, than the southern lines. Everyone of the northern lines serves one or more of the large Missouri River cities, and this fact probably accounts, in part at least, for the heavier density of those lines.

For a number of years the class rates in northern Missouri, being the portion of the state designated "A" territory, north of the main line of the Missouri Pacific Railroad, have been on a lower basis than the corresponding rates in what is known as "B" territory in southern Missouri. These two scales were made effective by the Railroad & Warehouse Commission of Missouri, and the relative adjustment has not beeen changed by its successor, the Public Service Commission.

The carriers' proposal to apply the uniform scale between points in Oklahoma and points in Kansas encounters the practical difficulty that the Kansas rates are said to constitute an integral part of the western trunk line adjustment. We disapprove at this time the application of the scale into Kansas, without making a definitive finding as to the propriety of doing so. This position is made necessary by the proposals of the carriers which, if approved, would make the interstate rates into Kansas substantially higher than the Kansas intrastate rates. The interstate class rates between Kansas and Oklahoma at the time of the hearing were substantially on the same basis as the intrastate rates in Kansas.

PROPOSED DEPARTURES FROM THE UNIFORM BASIS.

In spite of the admitted desirability of establishing a uniform scale of class rates throughout the territory involved, the carriers proposed two different sets of class rates for our approval. The uniform scale would apply generally for distances not over 350 miles. Another scale, higher by approximately the amount of the bridge tolls prescribed by us in the *Memphis Case*, would apply from Memphis as well as from the St. Louis and Kansas City groups. The application of the higher scale from Memphis is explained by the additional bridge service performed, a matter to be discussed in greater

detail later, but the propriety of applying it from St. Louis requires further consideration. The carriers explain that the St. Louis group contains numerous points, many of them involving longer hauls than from St. Louis proper, and contend that the rates should be somewhat higher than the uniform scale to compensate them for this additional service. Moreover, the scale proposed from St. Louis would generally apply to two-line hauls as well as to single-line hauls, whereas the uniform scale proposed for general application in this territory applies to single-line hauls only.

The great bulk of traffic moving from St. Louis to points in Arkansas and Louisiana is moved over the line of the Missouri Pacific on the east side of the Mississippi River and crosses the river twice, once at St. Louis and again at Thebes. It is the contention of the carriers that this additional service justifies the imposition of something akin to bridge tolls for the additional service performed. It is believed, however, that in applying a distance scale the rates should generally be made on a short-line distance basis, without attempting to follow the actual movement of the traffic over the various routes. The Missouri Pacific and the St. Louis-San Francisco have their own rails direct from St. Louis to Arkansas, and the distances should apparently be figured over those routes.

The carriers are criticised by some of the protestants for their failure to adhere to the idea of uniformity in their proposals. Memphis inquires why its rates to Arkansas points should be based strictly on the distance scale if St. Louis, a competing jobbing point, is to have rates that are in some respects lower, distance considered. Wichita and other cities in southern Kansas complain that the proposed scale is to be applied from Kansas City in some instances for two-line hauls as well as for single-line hauls, whereas from Wichita and other points in southern Kansas the rates for two-line hauls would be constructed upon full combination.

Further difficulty arises from the fact that while substantial increases in the territory here involved are proposed, no corresponding increases in rates in contiguous territory are suggested. For years the first-class rate between Memphis and Kansas City has been 80 cents, 20 cents higher than from St. Louis and the same as from Chicago to Kansas City. It is here proposed by the carriers to increase the Memphis-Kansas City scale from 80 cents to $1.46, while making no change whatever in the rate from St. Louis or from Chicago, except for the general increases of 25 per cent already effective.

A similar protest is made by the Oklahoma interests, whose rates from St. Louis and from the defined territories are to be increased substantially, without any change whatever in the corresponding

rates to Kansas points on the north or to Texas common points on the south.

The low scale of jobbers' rates which has long been in effect between points in Kansas and points in Oklahoma, and on which a substantial volume of merchandise traffic has moved, is singled out for increase. This scale is to all intents and purposes the same as that now applying, and which has applied for many years, within Kansas. Evidence introduced on behalf of the Public Utilities Commission of Kansas goes to show that these very rates in the first instance were established by the voluntary action of the carriers for interstate transportation from Kansas City, Mo., to Kansas points. It is plausibly contended that it was necessary for the Kansas commission, in order to protect Kansas shippers against undue prejudice, to make the same basis of rates applicable on intrastate traffic. The carriers do not propose to increase the interstate rates between the Missouri River cities and Kansas points, after which the Kansas intrastate rates and the jobbers' rates were patterned. Nor is it the carriers' design at this time, although increases in the Kansas-Oklahoma rates and in the Missouri-Oklahoma rates are suggested, to increase any of the class rates between points in Missouri and points in Kansas.

Again, it is proposed by the carriers to increase the class rates from New Orleans to Kansas City, Omaha, and Sioux City groups, with no change whatever in the corresponding rates to Chicago, Milwaukee, or Minneapolis groups.

No satisfactory explanation of the incompleteness of these proposals is made by the carriers except that they find it advisable to fix some limit to the extent of their rate adjustments. They intimate that if the increases here proposed are approved, other rates in contiguous territory will not be overlooked.

PERCENTAGE RELATION BETWEEN THE CLASSES.

In suggesting to apply the Natchez scale in the territory involved the carriers intend to observe the percentage relationship between the various classes provided therein. This is opposed by some of the parties to this proceeding because the percentages employed in constructing the Natchez scale are higher, particularly for fourth class, than those now in effect from Memphis and from St. Louis to certain Arkansas points and elsewhere in this territory.

The table following is prepared to show how the Shreveport scale percentages compare with those observed in the west and southwest generally:

	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Shreveport Case [1]	100.0	85.0	70.0	60.0	48.0	52.0	40.0	35.0	30.0	25.0
Southwestern Class Case [2]	100.0	85.0	70.0	60.0	48.0	52.0	40.0	35.0	30.0	25.0
Memphis-Louisiana Case [3]	100.0	85.0	70.0	60.0	50.0	52.0	40.0	35.0	30.0	25.0
Marshall and Jefferson Case [4]	100.0	85.0	70.0	60.0	50.0	52.0	40.0	35.0	30.0	25.0
Kansas City-New Mexico Case [5]	100.0	85.0	70.0	60.0	50.0	52.0	40.0	35.0	30.0	25.0
St. Louis-Texas Case [6]	100.0	85.0	71.0	65.0	51.0	54.0	43.0	38.0	31.0	27.0
New Orleans-Texas Case [7]	100.0	88.0	75.0	64.0	51.0	52.0	47.0	39.0	33.0	28.
Missouri River-Nebraska Case [8]	100.0	85.0	70.0	60.0	45.0	50.0	35.0	30.0	25.0	17.
Missouri River-Utah Case [9]	100.0	85.0	75.0	65.0	50.0	55.0	40.0	35.0	25.0	21.
Iowa-Nebraska Case [10]	100.0	84.0	67.0	50.0	40.0	45.0	35.0	30.0	25.0	20.
Memphis-Arkansas Case [11]	100.0	84.0	67.0	53.5	39.5	43.0	35.0	29.5	24.5	19.
Arkansas intrastate [12]	100.0	85.0	70.0	55.0	40.0	45.0	35.0	30.0	25.0	20.
Missouri intrastate [12]	100.0	85.0	70.0	60.0	50.0	55.0	45.0	35.0	27.0	20.
Oklahoma intrastate [12]	100.0	83.0	68.0	58.0	50.0	46.0	39.0	32.0	25.0	19.
Texas intrastate [12]	100.0	85.0	70.0	60.0	49.0	51.0	39.0	34.0	29.0	24.
Kansas intrastate [12]	100.0	88.0	78.0	63.0	54.0	48.0	37.0	31.0	24.0	18.
St. Louis-Arkansas [13]	100.0	85.0	65.0	49.0	37.0	39.0	32.0	27.0	23.0	18.

[1] Percentages employed by Interstate Commerce Commission 48 I. C. C., 312, 345.
[2] Percentages employed by Interstate Commerce Commission 48 I. C. C., 379.
[3] Percentages employed by Interstate Commerce Commission 39 I. C. C., 224.
[4] Percentages employed by Interstate Commerce Commission 39 I. C. C., 349.
[5] Percentages employed by Interstate Commerce Commission 34 I. C. C., 392.
[6] Percentages employed by Interstate Commerce Commission 20 I. C. C., 463.
[7] Percentages employed by Interstate Commerce Commission 38 I. C. C., 1.
[8] Percentages employed by Interstate Commerce Commission 40 I. C. C., 204.
[9] Percentages employed by Interstate Commerce Commission 32 I. C. C., 551.
[10] Percentages employed by Interstate Commerce Commission 28 I. C. C., 563.
[11] Percentages employed by Interstate Commerce Commission 43 I. C. C., 121.
[12] Average for all distances to and including 400 miles.
[13] Based on St. Louis-Little Rock rates.

It is important to bear in mind that the movement of traffic on the carload classes in this territory is small. The heaviest movement of merchandise traffic in the southwest is on fourth class, approximately half of the total less-than-carload movement in the southwest being on fourth-class rates. The objections raised by certain parties to the use of the Shreveport percentages can be illustrated and explained by considering the fourth-class percentage. The fourth-class rates in the Shreveport scale are 60 per cent of first class. The preceding table shows that the same percentage has been employed by us in a number of cases in western territory. Wherever the Natchez scale is now applicable the fourth-class percentage is 60. The same percentage for fourth class, or a higher percentage, is now applicable on intrastate traffic in Kansas, Missouri, Texas, most of Louisiana, and, since the hearing, in Oklahoma.

The fourth-class rates from St. Louis to Arkansas points, illustrated by the rates to Little Rock shown in the table, are but 49 per cent of first class. In a previous report we found that the average for fourth class from St. Louis to 26 representative points in northeastern Arkansas was 53.5 per cent. *City of Memphis* v. *C., R. I. & P. Ry. Co.*, 43 I. C. C., 127. The present fourth-class rates from Memphis to Arkansas points are well below 60 per cent; within the state of Arkansas they are 55 per cent of the first-class rate. The Arkansas interests, including the state commission, insist that 60 per

cent is excessive for fourth class, and contend that many low-grade commodities are rated fourth class in less-than-carload quantities. They therefore urge that the spread of 10 points in the Natchez scale between the third-class and fourth-class percentages is inadequate, and should be at least as great as the spread between second and third class.

The question is therefore squarely presented whether in prescribing the Natchez scale, or a scale substantially like it, in the general territory here involved, we should follow the Shreveport class percentages, including 60 per cent for fourth class, or should arbitrarily reduce the percentage for fourth class to 53 or 54 in recognition of the adjustment that has hitherto prevailed in part of the territory. In the interest of uniformity we believe that the former is the better policy. With the 60 per cent basis in effect in many parts of this general territory, and observed in the rates from Memphis to southern Arkansas, it is desirable to prescribe the same basis in connection with the uniform scale here approved.

In the Shreveport scale there is a spread of 12 per cent of first class between the fourth-class and fifth-class percentages. This does not adequately reflect the difference in the cost of handling fourth-class traffic in less-than-carload quantities and fifth-class freight in carloads. Evidence was submitted by the carriers intended to show the expense involved in handling less-than-carload traffic. The Oklahoma interests concede that the spread between the carload classes and the less-than-carload classes should be widened. Upon principle, considering the different character of carload and less-than-carload service, it is proper to prescribe a wider spread between fourth and fifth class than between second and third class. This could be effected either by increasing fourth class or by reducing fifth class. We can not here reasonably narrow the spread between fourth and fifth as fixed in the Shreveport scale by reducing the fourth-class percentage below 60.

There is a marked difference between the southwestern territory and western trunk line territory with respect to the movement of commodities on carload class rates. The southwestern carriers have hitherto published relatively high class rates for the carload classes and have made commodity rates to move the traffic, hence little traffic moves in that section on carload class rates. In western trunk line territory, with relatively lower carload class rates, commodity rates are less frequently employed, and there is a heavy movement of traffic on the carload class rates. The last preceding table indicates that the percentages for the lettered classes are generally lower in the territory north of the Missouri River than in the southwest.

Considering the widespread prevalence of the Shreveport class percentages in the general region immediately to the south of the region here involved, and the eminent desirability of uniform class percentages in the distance class scales in the entire region, we find that the Shreveport class percentages should be prescribed here, without, however, prejudicing further inquiry into this matter, upon which we have recently commented in *Consolidated Classification Case*, 54 I. C. C., 1, at page 11.

THE RATES FOR JOINT HAULS.

The methods of constructing class rates for two-line hauls in the southwest are numerous and divergent. Rates for two-line hauls from Memphis to points in Arkansas on the trunk lines are commonly made by full combination. To points not located on the trunk lines joint rates are published, but no definite basis is observed. In the *Shreveport Case* and in the *Southwestern Class Case*, *supra*, we prescribed the following differentials for extra line hauls:

Classes	1	2	3	4	5	A	B	C	D	E
Differentials	8	7	6	5	4	4	4	3	2	2

Almost the same differentials have been prescribed for two-line hauls within Arkansas by the railroad commission of that state. For hauls in that state embracing three lines or more a somewhat higher scale, ranging from 10 cents on first class to 2 cents on class E, is applied. In common-point territory in Texas the differentials shown above are in force. In Oklahoma there are three scales, those for two lines being on a 9-cent scale, those for three lines on a 14-cent scale, and those for four lines or more on an 18-cent scale. In Missouri there are two scales, one ranging from 7 cents to 2 cents and the other from 12 cents to 3 cents. In Louisiana the maximum basis is 90 per cent of the combination of locals.

In their proposed class rates between Memphis and points on class A lines in Arkansas the carriers proposed the following scales of differentials:

Classes	1	2	3	4	5	A	B	C	D	E
Two lines	8	7	6	5	4	5	3	3	2	2
Three or more lines	10	9	7	6	5	6	4	4	3	3

These differentials are nearly the same as those now applicable to intrastate traffic between class A lines in Arkansas.

The question whether through rates should be constructed without the addition of arbitraries because of the haul over more than one line not under common control or part of the same system is one which is fundamental and important. It concerns much more territory than that embraced in the present proceeding, and for the satisfactory

determination of the question a broader and more specific record should be presented than that which we now have before us. Without foreclosing our determination if that question shall be presented to us upon an adequate record, we are constrained for the present to follow the basis fixed by us in the *Shreveport Case* for hauls over more than one line not under common control or part of the same system. Joint rates throughout the territory will be based upon the arbitraries fixed in that case.

The uniform scale of class rates approved herein should apply without the addition of arbitraries to traffic moving over a single line of railroad or over two or more lines that are under the same management and control. The arbitraries herein approved are not to be increased 25 per cent.

THE ALLEGED DISCRIMINATORY CHARACTER OF INTRASTATE CLASS RATES IN ARKANSAS.

We found in a previous report, *City of Memphis* v. *C., R. I. & P. Ry. Co.*, 39 I. C. C., 256, that the class rates between Memphis and points in eastern Arkansas, were unduly prejudicial to Memphis to the extent that they exceeded by more than reasonable bridge tolls the corresponding class rates contemporaneously applicable to Arkansas intrastate traffic. The present record clearly establishes the correctness of that finding. The preferential character of the intrastate adjustment is quite generally conceded, and it is not thought necessary to outline here the voluminous evidence introduced in support of the complaint of the city of Memphis. The following comparisons will suffice to show that the intrastate rates are much lower than the interstate rates for similar distances:

From Memphis to—	Miles.	Class rates, in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Earle, Ark.	26.0	36	31	25	20	16	16	14	11	10	9
Arkansas scale[1]	26.0	28	24	19	15	11	12½	10	8½	7	5½
Forrest City, Ark.	44.8	40	35	29	23	19	20	16½	12½	10½	9½
Arkansas scale[1]	44.8	36	30	25	19	14½	16	12½	11	9	7
Brinkley, Ark.	69.0	46	39	33	26	21	22	18	13	12	10
Arkansas scale[1]	69.0	40	34	28	22	16	18	14	12	10	8
Pine Bluff, Ark.	153.0	70	60	45	36	27	29	22	18	15	12
Arkansas scale[1]	153.0	58	49	40	32	23	26	20½	17½	14½	11½
Camden, Ark.	223.0	100	89	74	57	41	44	36	30	25	20
Arkansas scale[1]	223.0	69	58	48	38	27½	31	24	20½	17	14
Texarkana, Ark.	293.0	105	89	74	63	53	55	42	37	32	26
Arkansas scale[1]	293.0	76	64	53	42	30½	34	26½	23	19	15

[1] As prescribed for intrastate traffic by the Corporation Commission of Arkansas under its Standard Distance Tariff No. 5.

Rates from Memphis may appropriately be somewhat higher than the Arkansas intrastate rates because of the additional service involved in crossing the Mississippi River. In a previous report, *City of Memphis* v. *C., R. I. & P. Ry. Co.*, 43 I. C. C., 126, we tentatively approved the following scale of bridge tolls for the Memphis crossing:

Classes	1	2	3	4	5	A	B	C	D	E
Tolls	3	3	3	2	2	2	1½	1½	1½	1½

We have considered the propriety of bridge tolls or river-crossing charges in the following cases: *Commercial Club of Omaha* v. *C. & N. W. Ry. Co.*, 7 I. C. C., 386; *Freight Bureau of Cincinnati C. of C.* v. *C., N. O. & T. P. Ry. Co.*, 7 I. C. C., 180; *Railroad Commissioners of Ind.* v. *K. & I. B. R. R. Co.*, 14 I. C. C., 563; *R. R. Com. of Iowa* v. *I. C. R. R. Co.*, 20 I. C. C., 181; *East Dubuque Supply Co.* v. *I. C. R. R. Co.*, 28 I. C. C., 425; *Edwards & Bradford Lumber Co.* v. *C., B. & Q. R. R. Co.*, 25 I. C. C., 93; *Norman Lumber Co.* v. *L. & N. R. R. Co.*, 22 I. C. C., 239, 246; 29 I. C. C., 565; *Mfrs. & Merchants Asso.* v. *A. & A. R. R. Co.*, 24 I. C. C., 351; 25 I. C. C., 116; 37 I. C. C., 350; *Rock Spring Distilling Co.* v. *I. C. R. R. Co.*, 29 I. C. C., 18; *Paducah Board of Trade* v. *I. C. R. R. Co.*, 29 I. C. C., 583; 29 I. C. C., 593; *Rates on Lumber from Southern Points*, 34 I. C. C., 652; *Paducah Board of Trade* v. *C., B. & Q. R. R. Co.*, 37 I. C. C., 743, 750; *City of Memphis* v. *C. R. I. & P. Ry. Co.*, 43 I. C. C., 121, 126; and *Natchez Chamber of Commerce* v. *L. & A. Ry. Co.*, 52 I. C. C., 105, 125.

Whether generally there is justification for charges in addition to the through rate because of the movement over a bridge is an important and far-reaching question for the further pursuit of which there may be warrant, but for the proper determination whereof the present record is insufficient.

To depart in this instance from previous usage and to permit no specific allowance for a Mississippi bridge or river crossing where the instrumentalities therefor involve special investment or special service would be out of line with our action upon numerous rate schedules heretofore approved, and out of keeping with similar rate adjustments instituted by the carriers.

Considerable evidence was introduced as to the character of the Memphis bridges, the investment in the new bridge, and its cost of operation. Without making any definite finding thereon, we are not convinced that the tolls previously approved by us for the bridge crossing at Memphis have been successfully assailed.

We find that the interstate class rates between Memphis and all points in the state of Arkansas, located on the line or lines of the following class A railroads, Chicago, Rock Island & Pacific Railway Company, St. Louis Southwestern Railway Company, St. Louis-San

Francisco Railway Company, and St. Louis, Iron Mountain & Southern Railway Company (now part of the Missouri Pacific), are now and for the future will be unreasonable to the extent that they exceed by more than the following reasonable maximum bridge tolls the rates shown in Appendix No. 1:

Classes	1	2	3	4	5	A	B	C	D	E
Tolls	3	3	3	2	2	2	1½	1½	1½	1½

The bridge tolls here approved are to be added to the rates as plussed, but are not themselves to be increased.

We further find that traffic moves between Memphis and points in the state of Arkansas under transportation conditions that are substantially similar, except for the river crossing, to the conditions governing the corresponding movement of traffic within the state of Arkansas; that the interstate class rates between Memphis and all points in the state of Arkansas located on the line or lines of the class A railroads named in the second preceding paragraph, are now and for the future will be unduly prejudicial to Memphis and to shippers there located, and unduly preferential of points in the state of Arkansas and of intrastate traffic in Arkansas, to the extent that the said interstate rates exceed or may exceed by more than the bridge tolls shown in the second preceding paragraph the corresponding class rates or less-than-carload commodity rates contemporaneously maintained for like distances upon intrastate traffic in the state of Arkansas; and that any greater difference or disparity between the said interstate and intrastate rates causes and would cause an undue burden upon interstate commerce.

The publication of intrastate class rates as commodity rates for the convenience of shippers may have the effect of denying to carriers the advantage of an increase of the intrastate class rates. The position of the Arkansas commission is, as we understand it, that all class rates that are published as less-than-carload commodity rates should be automatically increased by an increase in the class rates. Obviously this should be done to remove the undue prejudice to Memphis shippers that would otherwise result.

The alleged prejudicial character of the carload commodity rates must await, as all parties agree, the fixation of the level of the class rates. Our attention has been called to the fact, however, that many of the commodity descriptions applicable to intrastate traffic in Arkansas are more liberal than the corresponding descriptions provided in the interstate tariffs from Memphis. This can not be explained by differences in transportation conditions. Like the exceptions to the classification, which are in numerous instances more favorable to Arkansas shippers and to St. Louis shippers than to Memphis, they are wholly indefensible. The defendants should

proceed forthwith to correct these inequalities. A conference at which both the defendants and the shipping interests are represented would remove many of the difficulties. Such a conference was suggested at the hearing and all the interested parties agreed to it.

MEMPHIS VERSUS ST. LOUIS IN SOUTHEASTERN MISSOURI AND ARKANSAS.

Memphis jobbers distribute merchandise not only in Arkansas, but in southeastern Missouri. The city of Memphis alleges that the class rates from Memphis to points in Missouri are unduly prejudicial to Memphis to the extent that they exceed the corresponding class rates contemporaneously maintained from St. Louis to the same territory for like distances.

The evidence shows that the transportation conditions between Memphis and points in southern Missouri are substantially the same as those between St. Louis and the same points, and that the rates were at one time on the same basis. Witness after witness familiar with the transportation conditions expressed the view that there is no reason why the rates from Memphis to this territory should exceed the rates from St. Louis for like distances. Certainly the transportation conditions in southern and southeastern Missouri are no more favorable than in northeastern Arkansas. Southern Missouri is not densely populated, nor is the density of freight traffic greater than in northeastern Arkansas. The only lines extending south in Missouri from St. Louis to the points here involved are the Missouri Pacific and the Frisco. The former's line is so difficult to operate that it is not used for through freight traffic from St. Louis, which is carried across the Mississippi River at Ivory, Mo., just south of St. Louis, and thence on the Illinois side of the river to Thebes, Ill., where it again crosses the river to Missouri. The Frisco's line carries comparatively little traffic. The heavy volume of through freight traffic moving over the lines of the Missouri Pacific and the Cotton Belt traverses practically the whole state of Arkansas but passes through only a small part of Missouri. The Cotton Belt, like the Missouri Pacific, carries its through traffic along the Illinois side of the river.

Wholesale grocery houses at Memphis compete with St. Louis jobbers in southeastern Missouri. Articles manufactured at Memphis are shipped in less-than-carload lots as far north as and including the line of the Frisco extending from Cape Girardeau through Mingo to Springfield. It is the view of the Memphis jobbers that the part of Missouri lying south of that line is natural distributing territory for Memphis, and that they could compete with St. Louis in that territory to much better advantage if the rates were more fairly adjusted.

The rates from St. Louis to southern and southeastern Missouri are now based on the "Scale B" rates prescribed by the Public Service Commission of Missouri, which scale applies in the part of the state lying on and south of the main line of the Missouri Pacific through Jefferson City, Sedalia, and Pleasant Hill. In the following table those rates are compared with others in the same general territory. For convenience the comparison is limited to the first five classes:

	Miles.	Class rates, in cents per 100 pounds.				
		1	2	3	4	5
From St. Louis, Mo., to Poplar Bluff, Mo.	166	54	46	38	32	27
From Memphis, Tenn., to Doniphan, Mo.	166	74	60	48	38	28
From Memphis, Tenn., to Pine Bluff, Ark.	153	70	60	45	36	27
Shreveport scale	166	71	60	49½	42½	34
From St. Louis, Mo., to Ferguson, Mo.	183	57	48	40	35	28
From Memphis, Tenn., to Gray Ridge, Mo.	180	78	63	52	42	30
From Memphis, Tenn., to Perry, Ark.	184	73	85	56	41	33
Shreveport scale	183	75	64	52½	45	36
From St. Louis, Mo., to Doniphan, Mo.	200	60	51	42	36	30
From Memphis, Tenn., to Bertrand, Mo.	199	78	63	52	42	32
From Memphis, Tenn., to Ola, Ark.	208	77	68	58	43	34
Shreveport scale	200	77	65½	54	46	37

The rates from St. Louis to northeastern Arkansas points are now and for years have been on a lower basis, distance considered, than the rates from Memphis to Arkansas points for equal distances. The rates from St. Louis, moreover, to points in southeastern Missouri are so much lower than the corresponding rates from St. Louis to points in Arkansas that there is a sudden jump in the rates when the state line is crossed. This is exemplified by comparing the rates to Campbell, the last station in Missouri on the Cotton Belt, and St. Francis, the first station in Arkansas on the same line, the distance between the two stations being 4.4 miles:

From St. Louis to—	Miles.	Class rates, in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Campbell, Mo.	204.7	77.5	66.5	54	46.5	39	41.5	34	27.5	21.5	15
St. Francis, Ark.	209.1	101.5	82.5	66.5	54	39	41.5	34	27.5	21.5	16.5

The Missouri Pacific maintains a similar adjustment. For example, the first-class rate from St. Louis to Ferguson, the last station in Missouri, is 57 cents. The corresponding rate to Moark, the first station in Arkansas, is 78 cents, which it is proposed to increase to 85 cents. The distance between Ferguson and Moark is 4 miles.

The evidence plainly shows that the rates from St. Louis to points in southeastern Missouri are on an unduly low basis.

St. Louis does not contend that it is improper to apply identically the same distance scale from both Memphis and St. Louis to points in Arkansas, but insists that to do so without readjusting the inbound rates to St. Louis and Memphis from eastern points would give Memphis an undue advantage in distributing merchandise at destinations in Arkansas. The following is from the brief of exceptions to the report of the examiner filed on behalf of the St. Louis Chamber of Commerce.

> These carriers operating east of the Mississippi River, by basing their rates on fictitious water competition have established low rates to Memphis from the east, to enable Memphis shippers to scalp this southwestern territory. Under private control the long-haul carriers from St. Louis have established rates from St. Louis which obviously must have been lower than the rates from Memphis relatively, in order to neutralize the advantage which the eastern carriers have given Memphis on their inbound rates. * * * With the proper rates in effect from the east and from the north into Memphis, a reasonable mileage scale, applicable alike from St. Louis and Memphis, will be entirely satisfactory to the St. Louis interests.

In commenting on a similar position taken by Texas interests in the first *Shreveport Case*, *Railroad Commission of La.* v. *St. L. S. W. Ry. Co.*, 23 I. C. C., 31, we sufficiently answered this contention.

The contention by St. Louis that the proposed adjustment will create or exaggerate rate disparities lying outside of the limits of this complaint can not be accepted as ground for not remedying undue prejudice here attested. If, as the result of the remedy here applied, a corresponding adjustment is necessitated in another territory, that will be considered when the latter situation may properly be called to our attention.

We are of opinion and find that the interstate class rates from Memphis to all points in the state of Missouri located on and south of the St. Louis-San Francisco Railway running from Cape Girardeau, Mo., through Mingo, Mo., to Springfield, Mo., are now and for the future will be unreasonable to the extent that they exceed or may exceed by more than the reasonable maximum bridge tolls prescribed in this report the rates shown in Appendix No. 1, which rates so made we find to be reasonable maximum rates.

We further find that traffic moves from Memphis to points in southern Missouri under transportation conditions that are substantially similar, except for the river crossing, to the corresponding movement of traffic from St. Louis to points in southern Missouri; that the interstate class rates from Memphis, Tenn., to all points in the state of Missouri on and south of the line of the St. Louis-San Francisco Railway running from Cape Girardeau, Mo., through Mingo, Mo., to Springfield, Mo., are now and for the future will be unduly prejudicial to Memphis and to shippers there located, and

unduly preferential of St. Louis, Mo., and shippers there located, to the extent that the said interstate class rates exceed or may exceed by more than the reasonable maximum bridge tolls prescribed in this report the corresponding intrastate or interstate class rates contemporaneously maintained from St. Louis, Mo., to the same points for like distances; and that any greater difference or disparity between the rates from Memphis and St. Louis to said destinations causes and would cause an undue burden upon interstate commerce from Memphis.

Memphis interests will doubtless object to the inclusion of the bridge tolls in the Memphis rates and their noninclusion in the St. Louis rates, for the reason that much of the traffic from St. Louis to southeastern Missouri moves over the Missouri Pacific's line on the Illinois side of the river and crosses the river twice. It is believed, however, that where distance scales of rates are rigidly applied all points should be given the benefit of their short-line distance, and that it is impracticable where rates are constructed on a distance basis to follow the actual movement of traffic through alternative channels.

Memphis complains that its class rates to points in Arkansas are higher than the corresponding rates from St. Louis. As already explained the rates from St. Louis to points in northeastern Arkansas are not constructed on a distance basis, and are lower mile for mile than the corresponding rates from Memphis. It is the position of Memphis that the rates from St. Louis to this territory should be made on precisely the same basis as the rates from Memphis.

Northern Arkansas is within the 350-mile zone from St. Louis. Though conceding that the rates for distances under 350 miles should generally conform to the uniform scale, the carriers propose to construct the rates from St. Louis to points in northern Arkansas on a group basis. The effect of this would be to accord to some points rates lower than the uniform scale would make them and to impose upon other points rates higher than the scale. This is opposed by the Corporation Commission of Arkansas, which contends that:

> If the mileage scale is a reasonable scale of rates, none of these points can lawfully be deprived of those reasonable rates to which they are entitled, because of the desire of the carriers to maintain a group of destinations.

The manner in which these rates have been constructed in the past has been the cause, not only of the Memphis complaint, but of intense dissatisfaction on the part of Arkansas interests as well. The rates from St. Louis to northern Arkansas stations, to be reasonable and to avoid undue preferences and prejudices, should be constructed entirely upon a distance basis. This applies in particular to all points

in the Little Rock rate group. Destination groups should be eliminated, and each point placed upon its own distance basis.

We find that the interstate class rates from Memphis to all points in the state of Arkansas located on the lines of the Chicago, Rock Island & Pacific Railway Company, St. Louis Southwestern Railway Company, St. Louis-San Francisco Railway Company, and St. Louis Iron Mountain & Southern Railway Company (now part of the Missouri Pacific) are now and for the future will be unduly prejudicial to Memphis and to shippers there located and unduly preferential of St. Louis and of shippers there located to the extent that they exceed or may exceed by more than the reasonable maximum bridge tolls prescribed in this report, the corresponding class rates contemporaneously maintained from St. Louis, Mo., to the same destinations for like distances. The 350-mile limitation as to distance is not applicable hereto.

CONCENTRATION AND FREE DELIVERY OF COTTON AT MEMPHIS.

Memphis is the largest interior cotton market in the country. It has modern facilities for storing, grading, and compressing cotton. There are 94 buyers and 47 factors in Memphis. These economic advantages, together with the banking facilities afforded, tend strongly to draw cotton to Memphis rather than to smaller compress points.

Cotton of high grade is produced in what is known as the delta section in eastern Arkansas. It is customary to ship the uncompressed cotton from the producing points to compresses located at various points in this territory, where it is compressed into bales and forwarded principally to destinations in the east. Among the more important compress points are Memphis, Little Rock, Earle, Helena, Forrest City, Marianna, and Hoxie. It is frequently necessary to "back haul" cotton to reach a compress. For the extra service involved in back hauls within the state of Arkansas the Missouri Pacific imposes a flat charge, usually 5 cents per 100 pounds, in addition to the through rate from point of origin to destination. The same arrangement does not apply, however, to cotton back hauled from Missouri Pacific stations in Arkansas to Memphis and thence forwarded via the Missouri Pacific to eastern points. Memphis is required to pay combination rates that are sometimes in excess of the rates paid by its Arkansas competitors on cotton compressed at Arkansas points.

In the complaint of the city of Memphis it is alleged that "unjust discrimination in favor of Arkansas points is shown by granting to such points concentration and reconsigning privileges which are refused to Memphis."

In a previous report, *City of Memphis* v. *C., R. I. & P. Ry. Co.*, 39 I. C. C., 256, 271, we discussed this situation and said:

> We are of opinion and find, therefore, that the defendants' present concentration, compression, and reconsignment practices are unduly prejudicial to Memphis in so far as defendants withhold the privilege of concentration, compression, and reconsignment at Memphis on cotton moving from Arkansas points to Memphis destined for points beyond in southern and official classification territories where through routes and joint rates are in effect via Memphis from points of origin to destinations in those territories, while similar practices are in effect at St. Louis and East St. Louis. Where, however, the movement into Memphis for concentration, compression, and reconsignment would entail a back haul requiring the use of two cars inbound for one outbound, thus resulting in an uneconomical use of equipment, we consider that the carriers are justified in refusing to accord Memphis shippers such concentration, compression, and reconsignment services on the through rate from point of origin to point of destination.

The issue relating to concentration has been fully canvassed upon the present record. This feature of the case as now presented involves only the Missouri Pacific, and only stations on its line in the cotton-producing section in eastern Arkansas. It will be observed from the above excerpt that we thought Memphis entitled to relief only "where through routes and joint rates are in effect via Memphis," and where a wasteful back haul would not be involved. As the service to and from Memphis involves in many cases a long back haul, the Memphis complainants received no benefit from our findings with respect to Missouri-Pacific stations. For commercial reasons cotton factors in Memphis desire to ship the uncompressed cotton to that point for compression rather than to Arkansas compresses. To transport cotton to Memphis for compression necessitates in almost every instance hauling it through at least one Arkansas point where a compress is located.

The concentration services accorded at Arkansas compress points may be illustrated by referring to the situation at Earle, Ark. The compress at that point is permitted to draw uncompressed cotton from stations on the main line of the Missouri Pacific from Higginson to Bald Knob, compress it at Earle, and reship the compressed cotton via St. Louis to the east at the through rate from point of origin plus 5 cents per 100 pounds for the back haul. Again, the compress at Newport may draw cotton from Moark and intermediate points a maximum distance of 75 miles. The out-of-line haul amounts in some instances to nearly 100 miles. As previously stated, Memphis is obliged to pay combination rates which are in some instances substantially higher than the through rates from Arkansas points.

It was difficult to ascertain at the hearing the exact relief desired by the Memphis interests, but they seem to desire an equalization of the through rates. If a compress at Newport can draw uncompressed cotton from a point north thereof, compress it, and ship the baled product to Boston for an aggregate charge of 85 cents, Memphis seems to desire to have the same aggregate charge apply via Memphis with the privilege of concentrating at that point. In other words, Memphis asks us to overlook in part the much longer back haul involved in reaching Memphis, and to equalize in a measure her disadvantage in location. This is not our function.

It is apparent that Memphis is disadvantageously located with respect to cotton originating at Missouri Pacific stations in Arkansas, hauled to Memphis for compression, and thence reshipped via St. Louis to points in the east. An illustration will make this clear. If a shipment of uncompressed cotton originates in the vicinity of Bald Knob, it would be hauled to Memphis for compression and then back hauled through Wynne and Knobel to St. Louis. In the course of this movement it would pass through several points at which compresses are located and at which the cotton could be more economically handled, from the standpoint of distance, than at Memphis. Thus, cotton originating in the neighborhood of Bald Knob might be compressed either at Newport or at Hoxie without any back haul whatever. Not only does the haul to Memphis involve an additional out-of-line service, but the shipment must cross and recross the Memphis bridge. Moreover, the principal Memphis compresses are located in the extreme southern part of the city and can be reached only by a long haul through the city. This service is in nowise similar to that performed at compress points in Arkansas where no corresponding bridge service is involved, and where only a simple switching service is necessary at the compress point. Memphis concedes that the Missouri Pacific may properly demand the outbound haul to St. Louis on cotton which it brings to Memphis for compression.

The movement of cotton from Missouri Pacific stations into Memphis is increasing in volume. In 1905 the Missouri Pacific hauled into Memphis 26,000 bales; in 1909, 32,000 bales; in 1913, 69,000 bales; in 1914, 80,000 bales; in 1915, 77,000 bales; and in 1916, 102,000 bales.

We find that the rates and practices of the Missouri Pacific governing the concentration of Arkansas cotton at Memphis are not shown to be unduly prejudicial to Memphis or otherwise unlawful.

It should be stated that the different methods of publishing the [illegible]es are unsatisfactory and fairly subject to criticism. We recom[illegible]the defendants that within 60 days a uniform basis of con[illegible]he rates be devised.

The question of free delivery of cotton at Memphis presents another issue, involving not only the Missouri Pacific but the Frisco and the Cotton Belt. In 39 I. C. C., 272, we said:

> The complaints allege that free delivery of cotton is made at Arkansas points and East St. Louis, but not at Memphis, and that this practice unduly prejudices Memphis. The defendant carriers' tariffs provide for free delivery when made to compresses located on the defendants' own rails, otherwise a delivery charge is made which the line-haul carrier adds to its rate. The carriers explain this apparent diversity in practice on the ground that the compresses at East St. Louis to which free delivery is made are all located upon the St. Louis Terminal Railway, of which they are joint owners, while at Memphis the compresses are located upon independent lines. They argue, therefore, that delivery to compresses on the St. Louis Terminal Railway is delivery upon their own rails, the charge for which they may lawfully absorb, but that at Memphis delivery is upon the lines of other carriers and the refusal to absorb those charges can not amount to undue discrimination.
>
> We are of opinion that the carriers' contention is sound and that the difference in practices at East St. Louis and Memphis does not constitute undue discrimination against Memphis. *Manufacturers Ry. Co.* v. *St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93; 32 I. C. C., 100. Furthermore, the delivery service accorded shippers of cotton at Arkansas points is under conditions substantially dissimilar to those existing at Memphis. We do not consider that Memphis is unduly prejudiced on account of these practices.

It now appears that most of the Memphis compresses are located on the Union Railway, a subsidiary of the Missouri Pacific, so that there is no substantial difference, as far as that carrier is concerned, between East St. Louis and Memphis. The distinction drawn still holds good, however, with respect to the Rock Island and the Frisco, which are unable to effect delivery on their own rails at most of the Memphis compresses. The Cotton Belt has access, under a contract, to industries located on the Missouri Pacific at Memphis.

The Frisco makes free delivery to Memphis compresses located on its own line, but charges 3½ cents per 100 pounds for deliveries on other lines. Less-than-carload competitive traffic, other than cotton and live stock, weighing 5,000 pounds or more is switched to industries on connecting lines within the Memphis switching limits without extra charge, the Frisco absorbing the charges of connecting lines. Memphis contends that cotton should not be excepted; but the complaint contains no allegation of discrimination as between cotton and other commodities.

The Missouri Pacific filed, in January, 1918, a fifteenth section application wherein it sought to impose at East St. Louis the same charge for the delivery of cotton as is now applied by that carrier for delivery on the line of the Union Railway, its subsidiary, at Memphis. The application was subsequently withdrawn at the instance of the Director General of Railroads.

We find that the practice of the St. Louis, Iron Mountain & Southern, now a part of the Missouri Pacific, and of the Cotton Belt, in imposing a greater charge for the delivery of cotton at compresses located on the Union Railway in Memphis than the corresponding charge, if any, contemporaneously maintained for the delivery of cotton at East St. Louis, is unduly prejudicial to Memphis and unduly preferential of East St. Louis. As to the other carriers we adhere to our previous finding that the conditions are different and that undue prejudice is not shown to exist.

INTERVENTION OF SOUTHERN ARKANSAS JOBBING CENTERS.

The present class rates from St. Louis—and therefore from all defined territories—to Arkansas points are grouped, the blankets being in some instances of large size. For example, the so-called Jonesboro-Blytheville group covers a large part of northern Arkansas. Under the proposals now made the group is reduced in size, but Jonesboro, 261 miles from St. Louis, is given the same rates as Hoxie, 227 miles. The Little Rock rate group, as shaped under the proposals now made, is also extensive, embracing points widely separated, ignoring differences in distance as great as 73 miles.

The intervention of the Arkansas Jobbers & Manufacturers Association and the Southern Arkansas Wholesale Grocers Association brings squarely into issue the propriety of continuing the group adjustment. Jobbers included in the membership of the latter organization at points in southern Arkansas such as McGehee, Fordyce, Camden, and Arkansas City are in active competition with Pine Bluff and Little Rock. Under the present adjustment, not only because of the group adjustment, whereby Pine Bluff is arbitrarily given the Little Rock basis, but because of the unduly sharp grading of the rates south of Pine Bluff, the jobbing centers of southern Arkansas are under a rate disadvantage which is not based upon differences in transportation conditions. Prior to June 25, 1918, the fifth-class rate from St. Louis to Moark, a point just south of the Missouri-Arkansas state line, was 31 cents, the distance being 187 miles. To Pine Bluff, 387 miles, the fifth-class rate was 37 cents, making a spread of 6 cents for 200 miles. Going south from Pine Bluff the grading is much sharper. At Fordyce, 59 miles south of Pine Bluff, the fifth-class rate was 9 cents higher than at Pine Bluff. At Camden, 73 miles farther than Pine Bluff, it was 14 cents higher. At El Dorado, 105 miles farther than Pine Bluff, it was 16 cents higher. These spreads should be compared with the difference of only 6 cents between Moark and Pine Bluff for a difference of 200 miles. Other rate comparisons showing the relative disadvantage of

southern Arkansas could be given, but it will suffice to say that the record definitely shows that disadvantage.

We find that the class rates prescribed in Appendix No. 1 are reasonable maximum rates from St. Louis to Hot Springs, Malvern, Prescott, Camden, Fordyce, El Dorado, Warren, Monticello, McGehee, Arkansas City, and other centers similarly located in southern Arkansas on the lines of the Chicago, Rock Island & Pacific Railway Company, St. Louis Southwestern Railway Company, St. Louis-San Francisco Railway Company, and St. Louis, Iron Mountain & Southern Railway Company (now part of the Missouri Pacific); and that class rates from St. Louis to the above-mentioned points are and will be unduly prejudicial to said points and unduly preferential of Pine Bluff and Little Rock to the extent that they exceed or may exceed the corresponding rates contemporaneously maintained to Pine Bluff and Little Rock for like distances. The 350-mile limitation as to distance is not applicable hereto.

COMPLAINT OF THE NATCHEZ CHAMBER OF COMMERCE.

In its complaint, Docket 10084, the Natchez Chamber of Commerce alleges, among other things, that the class rates from Natchez, Miss., to points in the states of Arkansas and Oklahoma are unduly prejudicial to Natchez and unduly preferential of Memphis, New Orleans, Little Rock, and other points. It is particularly alleged that the through class rates from Natchez to certain points in Arkansas exceed the sum of the intermediate rates to and from Helena, Ark., and Memphis, Tenn.

The following rates to Felsenthal, Ark., are typical of the maladjustment of which Natchez complains:

To Felsenthal, Ark., from—	Miles.	Class rates, in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Little Rock	181	64	54	45	35	25½	29	22½	19	16	13
Natchez	130	110	93	73	56	44	49	40	34	28	21
New Orleans	336	110	93	73	56	44	49	40	34	28	21

By including Natchez in the New Orleans rate group, the carriers have failed to accord to Natchez shippers rates which fairly reflect their relatively favorable location with respect to Arkansas traffic, disregarding a difference in distance of approximately 200 miles. In the second place, the Arkansas intrastate rates are distinctly lower than the interstate rates from Natchez.

Natchez shippers are in active competition at Arkansas points with shippers located at Memphis, Little Rock, and other points. It is believed unnecessary to prolong this report by including other rate comparisons or outlining other evidence submitted on behalf

of the Natchez Chamber of Commerce. It suffices to state that the record supports the principal allegations made by this complaint. In *Natchez Chamber of Commerce* v. *L. & A. Ry. Co.*, 52 I. C. C., 105, we held, in effect, that it was unfair toNatchez to include that point in the New Orleans group with respect to rates to western Louisiana and southern Arkansas. The complainant now seeks to enlarge the territorial scope of the relief there granted.

As in the case of all the Mississippi crossings south of Memphis the river transfer at Natchez is effected, not by bridge, but by car ferry. In the *Natchez Case*, above cited, we held that the charges for the transfer service at Natchez and the other lower Mississippi crossings should be determined by the addition of 20 constructive miles. As a result the crossing charges at Natchez are higher for the shorter distances than the bridge tolls herein suggested as reasonable for the Memphis crossing.

The volume of freight traffic moving over the Memphis bridge greatly exceeds the volume transferred at Natchez. Charges for a bridge service may be determined upon a basis somewhat different from that employed in the construction of charges at a crossing where the transfer is effected by barges or other floating equipment. In the former case the investment is relatively large and the fixed charges thereon usually constitute the chief item of expense, whereas in the latter case the investment is relatively small and the principal expenses are those incurred in operating the facility. Because of this difference and in view of the much greater volume of traffic at Memphis, the conclusion can not be reached on the present record that the differences in crossing charges will subject Natchez to undue disadvantage.

Another question that arises is whether the rates from Natchez to points on the Missouri Pacific in Arkansas should be made on the single-line basis or the two-line basis. The Missouri Pacific proper does not serve Natchez. The river transfer facilities are operated by the Natchez & Louisiana River & Transfer Company, a subsidiary of the Missouri Pacific. At the west bank this company interchanges freight traffic with the Missouri Pacific proper, and at the east bank with the Natchez & Southern Railway Company, another subsidiary of the Missouri Pacific, whose line runs from the east bank of the river into the city of Natchez, a distance of a little over 2 miles. These companies constitute, in practical effect, a single railroad, and the rates from Natchez to points on the Missouri Pacific should be constructed on the single-line basis, plus the river transfer charges. This is consistent with the finding previously made herein that the single-line scale should apply without the addition of arbitraries when the lines are under a common management and control.

Many of the rates from Natchez to points in eastern and southern Arkansas exceed the combinations on Helena or Memphis. In attempting to correct this maladjustment the carriers encounter the difficulty that the rates from Natchez to Helena and Memphis are governed by the southern classification, while the rates from Helena and Memphis to Arkansas points are governed by western classification. This difficulty is not insuperable, however, and will be lessened by our findings in *Consolidated Classification Case*, *supra*. The carriers will be expected, by alternative provisions in their tariffs, to give Natchez and New Orleans shippers the benefit of these combinations.

We find that the class rates from Natchez for distances not in excess of 350 miles to points on class A railroads in the state of Arkansas are now, and for the future will be, unreasonable to the extent that they exceed or may exceed by more than reasonable maximum charges for the Mississippi River crossing the class rates for corresponding distances shown in Appendix No. 1, except as they already coincide therewith; provided, however, that the additional charges for the river crossing shall be determined by adding to the actual distances not more than 20 constructive miles, which rates so made we find to be reasonable maximum rates; that traffic from Natchez to points in Arkansas moves under transportation conditions that are substantially similar to those governing the corresponding movement from Little Rock, except for the river crossing, and from Memphis; and that the class rates from Natchez for distances not in excess of 350 miles to points in Arkansas are unduly prejudicial to Natchez and shippers there located and unduly preferential of Little Rock, and of intrastate traffic in Arkansas, to the extent that they exceed by more than said reasonable charges for the Mississippi River crossing the corresponding class rates contemporaneously maintained from Little Rock to the same destinations for like distances; also that the class rates from Natchez to points in Arkansas are unduly prejudicial to Natchez and unduly preferential of Memphis to the extent that the said rates from Natchez exceed by more than the differences in said crossing charges at Memphis and at Natchez as prescribed herein, the corresponding rates contemporaneously maintained from Memphis to the same destinations for like distances and that any greater difference or disparity in the rates causes and would cause an undue burden upon interstate commerce from Natchez.

COMPLAINT OF THE CHAMBER OF COMMERCE OF MONROE, LA.

Monroe, La., is located in the northeastern part of Louisiana on the Ouachita River, being 97 miles north of Alexandria, 93 miles east of Shreveport, and 75 miles west of Vicksburg. Its complaint

under Docket 9886, consolidated with this investigation, alleges that the class rates from Monroe to points in southern Arkansas are unreasonable and unduly prejudicial to Monroe as compared with the corresponding class rates contemporaneously maintained from certain designated points in Arkansas to the same destinations. The part of the state of Arkansas here involved is described by the complainant as being the part on and south of a line drawn through Hope, Gurdon, Fordyce, and Arkansas City.

A Monroe jobber distributes groceries from Monroe to points in southern Arkansas in competition with jobbers located at Pine Bluff, Camden, Monticello, Dermott, and other points in Arkansas. It is unable, however, to reach points far beyond the Arkansas-Louisiana state line because of the alleged advantage in rates enjoyed by its Arkansas competitors. It is confident that it could widen its jobbing territory in Arkansas if the rates were more fairly adjusted. Representatives of other Monroe jobbing houses testified to the same general effect.

In the following table the interstate rates for the first five classes from Monroe to certain Arkansas points are compared with Arkansas intrastate rates:

To Arkansas points.	From—	Miles.	Class rates, in cents per 100 pounds.				
			1	2	3	4	5
Kimball	Monroe, La	48	42	37	32	27	22
Do	Eudora, Ark	49	36	30	25	19	14½
Dermott	Monroe, La	85	53	45	38	30	25
Do	Helena, Ark	98	46	39	32	25	18½
McGehee	Monroe, La	93	66	56	53	43	38
Do	Little Rock, Ark	101	48	41	33	26	19
Warren	Monroe, La	124	76	65	57	48	43
Do	Helena, Ark	137	54	46	38	29	21½
Eudora	Monroe, La	97	56	48	42	32	26
Do	Pine Bluff, Ark	97	46	39	32	25	18½

The Shreveport scale would generally effect reductions in the interstate rates above shown and increases in the intrastate rates. In fact a comparison of those rates with those in the Shreveport scale shows that in most instances the Shreveport scale strikes about halfway between the interstate rates and the intrastate rates above shown. The Shreveport scale as increased 25 per cent now applies from Natchez to points in southern Arkansas, within the state of Louisiana on intrastate traffic, from both Shreveport and Ruston to points in Texas common-point territory; and has recently been made effective between points in northern Louisiana, including Monroe, and points in southern Arkansas. There are numerous less-than-carload commodity rates within Arkansas that are much lower than the in-

terstate rates applicable from Monroe for like distances. This matter is discussed in connection with the Memphis situation, *supra.*

We find that the interstate class rates from Monroe, La., and from Shreveport, La., to all points on the following class A railroads, the Chicago, Rock Island & Pacific Railway Company; Missouri Pacific Railroad Company; and St. Louis Southwestern Railway Company, in the state of Arkansas located on and south of a line drawn through Hope, Gurdon, Fordyce, and Arkansas City, are now and for the future will be unreasonable to the extent that they exceed or may exceed the rates set out in Appendix No. 1, except as they already coincide therewith; that the transportation conditions governing the movement of traffic from Monroe and from Shreveport to the said points in Arkansas are substantially similar to those governing intrastate traffic in Arkansas; that the said interstate class rates are unduly prejudicial to Monroe and to Shreveport and to shippers there located and unduly preferential of Little Rock, Helena, Pine Bluff, Camden, Monticello, and Dermott, all in the state of Arkansas, to the extent that they exceed or may exceed for like distances the corresponding intrastate class or less-than-carload commodity rates contemporaneously maintained from the said Arkansas points to the same destinations.

Evidence introduced on behalf of Shreveport, La., shows that it is laboring under rate disadvantages with respect to rates to southern Arkansas points similar to those which have handicapped Monroe. By its intervention Shreveport seeks exactly the same basis of rates as is applied from Monroe. The record shows that Shreveport is entitled to this relief, and we so find.

COMPLAINT OF THE CORPORATION COMMISSION OF ARKANSAS.

In constructing class and commodity rates to western Arkansas and eastern Oklahoma from points in western trunk line territory the carriers have divided the latter territory into a number of rate groups, including so-called Davenport territory, Minneapolis-St. Paul territory, Chicago territory, etc. These groups of origin do not uniformly embrace the same points with respect to traffic destined to western Arkansas as they embrace with respect to traffic destined to eastern Oklahoma. This results in some instances in higher rates to western Arkansas than to eastern Oklahoma.

The complaint of the Railroad Commission of Arkansas, Docket 9927, alleges that this adjustment unduly prefers Muskogee and other points in eastern Oklahoma and asks, in effect, that the western trunk line groups be reconstructed in such a way as to accord to Fort Smith and other points in western Arkansas the same rates as those contemporaneously in effect to Muskogee and other points in eastern Okla-

homa. The carriers conceded that inequality existed and entered into a stipulation with complainant "that the Interstate Commerce Commission may enter an order requiring respondents to cease and desist from such practice and to so group all points (of origin) * * * that the grouping thereof shall be no more favorable to and from the contiguous Oklahoma points than to and from the Fort Smith group."

Thereupon the Oklahoma Traffic Association, fearing that the probable effect of the stipulation would be to increase the Oklahoma rates, intervened, and introduced in evidence a number of carefully prepared exhibits showing the short-line distances and the rates from the groups of origin involved to Muskogee as compared with the distances and the rates to Fort Smith. For example, Keokuk, Iowa, and a number of other points are in the St. Louis rate group with respect to traffic consigned to eastern Oklahoma, but in the Davenport group with respect to traffic consigned to western Arkansas. From 44 representative points in these groups the average distance to Muskogee is 456 miles, and to Fort Smith 533 miles. The rates, including the 25 per cent increase, from the 44 points are as follows:

To—	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Fort Smith	156½	132½	105½	81½	60	64	54	46½	41½	33
Muskogee	144	125	100	80	60	64	55	44	39	31½

A like showing was made with respect to 23 points that are in the St. Louis group with respect to traffic to eastern Oklahoma but in the Chicago group with respect to Fort Smith. The average distance to Muskogee is 566 miles, and to Fort Smith 640 miles. The rates are as follows, including the 25 per cent increase:

To—	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Fort Smith	162½	137½	109	85	64	69	59	50½	44	35½
Muskogee	144	125	100	80	60	64	55	44	39	31½

A continuation of this study with respect to other points and groups involved in the Arkansas complaint shows that Fort Smith's disadvantage in rates no more than reflects its disadvantage in distance.

We find that undue prejudice is not shown to exist, and that the order mentioned in the stipulation may not properly be entered.

55 I. C. C.

Another stipulation of like nature applies to rates from certain groups in the southeast. From defined territories known as Raleigh, Carolina, and Middlesborough territories joint through class and commodity rates are published to points in the state of Oklahoma. No joint through class rates or bases for same are published from the territories named to Arkansas stations named in Southwestern Lines Tariff 45–L, agent Leland's I. C. C. 1158, but combination rates apply which are higher than the rates from the same territories of origin to Oklahoma. From Macon territory, Atlanta–Knoxville territory, Birmingham–Chattanooga territory, and Nashville territory both class and commodity rates to Arkansas stations are generally as low as, or lower than, corresponding rates to Oklahoma. Respondents concede that they may properly be required to publish class and commodity rates from Raleigh, Carolina, and Middlesborough territories to Arkansas points no higher than the corresponding rates contemporaneously maintained to any part of Oklahoma.

Another paragraph of the same stipulation provides for the removal of inequality resulting from the failure of the carriers to accord to Arkansas as favorable rate bases and application thereof from southeastern points as is contemporaneously accorded to Oklahoma.

We find that class and commodity rates from the defined territories known and designated as Raleigh, Carolina, and Middlesborough territories to all points in the state of Arkansas are now and for the future will be unduly prejudicial to points in the state of Arkansas and unduly preferential of points in the state of Oklahoma to the extent that said rates to Arkansas points exceed or may exceed the corresponding rates contemporaneously maintained from the said defined territories to points in the state of Oklahoma. The class rates from the said defined territories to Arkansas points should be as much less than the corresponding rates to eastern Oklahoma as the rates from Macon territory to Fort Smith, Ark., are less than the corresponding rates to points in eastern Oklahoma, and should not exceed the combination of intermediate rates. The defendants should publish and maintain from all points in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee to all points in the state of Arkansas as favorable rates and bases therefor as are contemporaneously maintained and applied from the said defined territories to points in Oklahoma. In short, the inequalities recited in the stipulation should be removed. Because of the complicated nature of the adjustment and the expressed willingness of the defendants to publish promptly the rates

desired by complainant, no order will be entered at this time, but the matter will be held open for such further action as may be required.

CLASS RATES BETWEEN MEMPHIS AND KANSAS CITY.

Prior to the 25 per cent increase the first-class rate from Memphis to Kansas City was 80 cents, the distance via the direct line of the Frisco being 484 miles. Under the scale authorized by us in our previous report, 43 I. C. C., 124, the first-class rate of 80 cents was reached at a point only 186 miles west of Memphis. The scale reaches $1.05 at 300 miles, and if extended makes $1.40 for the distance of 484 miles from Memphis to Kansas City, as compared with the rate of 80 cents in effect on June 24, 1918. The application of the scale at intermediate points would therefore have resulted in wholesale departures from the fourth section.

The present and proposed rates between Memphis and the Missouri River are as follows, the 25 per cent increase not included:

Between—	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
Memphis and Kansas City:										
Present	80	65	45	32	27	32	27	22	18.5	16
Proposed	117	99	82	70	59	61	47	41	35	29
Memphis and Omaha:										
Present	82	67	47	34	29	34	29	25	22.5	20
Proposed	132	111	91	77	63	66	51	45	39	32

With the 25 per cent increase added the proposed first-class rate of $1.17 becomes $1.46. Under the Natchez scale the first-class rate from Memphis to Kansas City, including the bridge toll, would be $1.43. Most of the haul between Memphis and Kansas City lies in northern Arkansas and southern Missouri, a territory in which it is believed that the class rates should be generally the same as those approved for application throughout the state of Arkansas. On the other hand Kansas City lies in a territory where the traffic is dense and where the competitive influence of the numerous lines between the Mississippi and Missouri rivers is keenly felt.

It is not seriously questioned that the class rates between Memphis and Kansas City are depressed rates. This can be shown by a single comparison. The class rates between Memphis and St. Louis are on a depressed level, reflecting the influence of water competition. They are much lower than the rates to and from intermediate points. Bearing this in mind the following comparison of the rates in effect on June 24, 1918, is interesting:

Between—	Miles.	Class rates, in cents per 100 pounds.				
		1	2	3	4	5
Memphis and St. Louis	305	65	50	45	35	30
Memphis and Kansas City	484	80	65	45	32	27

It will be seen that the fourth and fifth class rates between Memphis and Kansas City, in spite of an additional distance of 179 miles, are lower than the corresponding Memphis-St. Louis rates. The value of the comparison is lessened by the fact that different classifications govern.

We have considered the contention earnestly made by the Missouri River cities that no advance whatever should be permitted in the Memphis-Missouri River rates at this time. They contend that these rates are essentially a part of the western trunk line adjustment, being related to the St. Louis-Missouri River rates and to the Chicago-Missouri River rates; also that the carload class rates are of much more importance in western trunk line territory than in the southwest, and should not be increased in a proceeding that concerns more directly the territory south of the Missouri River. These contentions overlook the fact, already explained herein, that the Memphis-Missouri River lines traverse northern Arkansas and southern Missouri, a territory in which the uniform scale is held to be properly applicable. It is conceded by the carriers that the Missouri River cities lie in a territory where the transportation conditions are much more favorable than in the southwest generally, and that this fact should be recognized in passing upon the proposed Memphis-Missouri River rates. Furthermore, the contention that the latter rates have no proper place in this proceeding is negatived by the fact, explained above, that the fourth section departures caused by these rates in conjunction with the higher rates at intermediate points in Arkansas were in part responsible for this investigation. It is established of record that rates between Memphis and points in Arkansas and southern Missouri can not be made without regard to the "overhead" rates between Memphis and the Missouri River cities. To approve the proposal of the carriers to increase these rates from a basis of 80 cents, first class, to a basis of $1.17, without any changes in the rates from St. Louis and Chicago, would do undue violence to a long-standing relative adjustment; and, on the other hand, to deny any increase in the rates between Memphis and Kansas City would be in effect to disregard the evidence of record with respect to the less favorable transportation conditions along the direct Memphis-Missouri River routes, such as the Frisco and the Missouri Pacific. In

our opinion a fair solution of this matter lies in approving a moderate increase, say to $1.20, in the first-class rates between Memphis and the Missouri River, with rates for the lower classes scaled upon the percentages approved herein. Because of the prevailing low percentages for the lower classes this will effect substantially greater percentage increases in the carload class rates than in the less-than-carload class rates.

It is appreciated that from one aspect this approval of a $1.20 scale, including the 25 per cent increase, between Memphis and Kansas City is not likely to affect any very considerable amount of less-than-carload traffic, and that it will have the result of lifting the carload class rates to a level far above their present level, which itself, in turn, is notably higher than the commodity rates upon which this traffic now for the most part moves. On the other hand, it seems equally impossible to acquiesce in a situation such as that now disclosed where the class rates between Memphis and Kansas City on the fourth and fifth classes, for a short-line distance of 484 miles, are less than the rates between Memphis and St. Louis for the same classes, the latter being a haul of 305 miles along the Mississippi River.

It may be remarked in passing that there is apparently no good reason for not applying from Kansas City to points in Arkansas and southern Missouri somewhat the same general basis of rates as applies from St. Louis. Traffic from Kansas City to points in the general territory here involved moves under conditions that are not dissimilar to those applicable to hauls from St. Louis. It has been the policy of the southwestern lines for many years to maintain equal rates from these two points when practicable. Thus, the class rates from St. Louis to points in the Texarkana group are identical with those from Kansas City, and a $1.47 scale applies from both points to Texas common points. No findings are made herein permitting increases in the rates from Kansas City to points in Arkansas and Oklahoma generally, but only because it seems advisable to delimit the scope of the proceeding. Apparently the scale could not be rigidly applied on the direct line of the Frisco between Memphis and Kansas City without exceeding the overhead rate.

Taking into consideration all of these matters we find that a reasonable scale of class rates between Memphis and Kansas City, including the 25 per cent increase, would not exceed the following, in cents:

Classes	1	2	3	4	5	A	B	C	D	E
Rates	120	102	84	72	58	62	48	42	36	30

In fixing class rates between Memphis and the Missouri River consideration must be given to the surprisingly light movement of traf-

fic on less-than-carload rates. For the whole month of September, 1917, the total movement of less-than-carload traffic on the first four classes from Memphis to Kansas City via the short line of the Frisco did not greatly exceed 100,000 pounds, whereas southbound from Kansas City to Memphis the total movement for that month on the first four classes was in the neighborhood of 165,000 pounds.

Our approval accorded the $1.20 scale between Memphis and Kansas City will undoubtedly produce or continue deviations from the fourth section via circuitous lines. Circuitous routes such as the Rock Island and the Missouri Pacific, lying generally south and west of the direct line of the Frisco, will be permitted to meet the $1.20 scale at points in the Kansas City group, provided the uniform scale, plus bridge charges, is not exceeded at intermediate points in Arkansas, and provided existing rates at intermediate points in Oklahoma, Kansas, and southern Missouri are not exceeded; and provided further that combinations on Kansas City are observed as maxima. In the opposite direction, from Kansas City to Memphis, like relief will be given. Existing rates from Kansas City to points in Arkansas are generally less than the scale, and an increase in the overhead rates from an 80-cent basis to $1.20 will lessen rather than increase the discrimination that now exists against intermediate points. As to whether the uniform scale may not properly be applied from Kansas City to points in southern Missouri and Arkansas, in the same manner as it will apply from St. Louis under the findings herein, it should be noted that we are called upon, under a formal complaint, to pass upon the rates from St. Louis to points in southern Missouri and Arkansas. On the contrary, there is no formal complaint here before us relating to the rates from Kansas City to points in southern Missouri or Arkansas. Nothing said herein is intended, therefore, either to authorize at this time a general increase in rates from Kansas City to points in Arkansas intermediate to Memphis, or to require their continuance indefinitely on a basis less than the scale. On the direct route of the Frisco from Kansas City to Memphis there are fourth section departures that are apparently unwarranted. Thus, an 83-cent rate applies from Kansas City to Hoxie, Ark., as compared with the overhead rate of 80 cents. On this direct route there should be no departures from the long-and-short-haul provision of the fourth section, but it would apparently be proper to authorize increases in the 83-cent rate to Hoxie and other points in eastern Arkansas to a basis that will make them more fairly related to the $1.20 scale herein approved.

CLASS RATES FROM ST. LOUIS TO OKLAHOMA POINTS.

While proposing, in fifteenth section applications since withdrawn, substantial increases from St. Louis to points in Oklahoma, no in-

creases whatever were proposed either to Texas points on the south or to Kansas points on the north. Oklahoma jobbing centers are in active competition with jobbers located in Kansas and Texas. To approve the carriers' proposal would accord to Oklahoma an elevated position in the rate structure not at all to its liking, and would create a maladjustment that would result in injustice to Oklahoma.

FOURTH SECTION APPLICATIONS.[1]

On January 17, 1918, the Commission issued a notice reading in part as follows:

Following 4th Section situations are assigned for hearing in connection with the Memphis-Southwestern Investigation, Docket No. 9702, et al.:

1. Class and commodity rates from St. Louis, Missouri, and points taking the same rates to Memphis, Tennessee, and points taking the same rates which are lower than rates from, to, or between intermediate points.

2. Class and commodity rates from New Orleans, Louisiana, and points taking the same rates to Memphis, Tennessee, and points taking the same rates which are lower than rates from, to, or between intermediate points.

3. Class and commodity rates from St. Louis, Missouri, and Memphis, Tennessee, and points taking the same rates to New Orleans, Louisiana, and points taking the same rates which are lower than rates from, to, or between intermediate points.

4. Class and commodity rates from Kansas City, Missouri, Omaha, Nebraska, and other Missouri River points and points related thereto to New Orleans, Louisiana, and points taking same rates which are lower than rates from, to, or between intermediate points.

For many years prior to federal control it was the policy of the railroads serving the Mississippi Valley to maintain relatively low class and commodity rates to and from river points because of the alleged necessity of meeting water competition. Higher rates have been maintained to and from intermediate points not located on the river, and appropriate fourth section applications have been filed.

[1] The fourth section applications embraced in this proceeding are as follows: Nos. 1766, 2174, and 2176 filed by W. P. Emerson, agent; Nos. 1867, 1898, and 2040 filed by W. H. Hosmer, agent; Nos. 1950 and 1951 filed by Kansas City Southern Railway Company; Nos. 464, 467, 469, 621, 623, 626, 629, 630, 632, 634, 636, 639, 643, 672, 674, 676, 678, 679, 693, 696, 697, 699, 702, 1617, and 1618 filed by F. A. Leland, agent; Nos. 4218, 4219, and 4220 filed by the Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company; No. 1528 filed by the Midland Valley Railroad Company; Nos. 364 and 365 filed by the Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad Company, and Iberia & Vermilion Railroad Company; No. 601 filed by the New Orleans & Northeastern Railroad Company, the Alabama & Vicksburg Railway Company, and the Vicksburg, Shreveport & Pacific Railway Company; No. 963, filed by W. A. Poteet, agent; No. 799, filed by the St. Louis & San Francisco Railroad Company; Nos. 4872, 4881, 4882, 4887, and 4918 filed by the St. Louis Southwestern Railway Company; No. 2045, filed by Illinois Central Railroad Company; No. 1952, filed by Louisville & Nashville Railroad Company; No. 2138, filed by Mobile & Ohio Railroad Company; No. 458, filed by Nashville, Chattanooga & St. Louis Railway; No. 2222, filed by Southern Railway Company in Mississippi; and No. 2043, filed by the Yazoo & Mississippi Valley Railway Company.

The following table, showing the class rates for the first six classes as increased 25 per cent from St. Louis to New Orleans and intermediate points on the Yazoo & Mississippi Valley Railroad indicates the extent of the departures here involved:

From St. Louis, Mo., to—	Miles.	Class rates, in cents per 100 pounds.					
		1	2	3	4	5	6
Lula, Miss.	369	139	117½	99	84	69	59
Cleveland, Miss.	427	159	130	112½	91½	76½	66½
Arcola, Miss.	463	154	126½	109	85	71½	61½
Kelso, Miss.	508	157½	132½	114	90	74	65
Port Gibson, Miss.	563	161½	136½	116½	92½	76½	66½
Gloster, Miss.	625	172½	140	121½	99	82½	72½
Slaughter, La.	660	154	129	111½	87½	71½	63
New Orleans, La.	696	112½	94	81½	62½	50	44

It will be observed that the rates from St. Louis to Lula, Miss., only 369 miles, are higher than the rates from St. Louis to New Orleans, 696 miles.

In the same way the following table shows the rates from New Orleans to Memphis and intermediate points, as increased 25 per cent:

From New Orleans, La., to—	Miles.	Class rates, in cents per 100 pounds.					
		1	2	3	4	5	6
Ponchatoula, La.	49	56½	45	37½	31½	26½	26½
Fernwood, Miss.	101	75	60	51½	42½	35	29
Hazelhurst, Miss.	150	87½	71½	60	50	42½	36½
Jackson, Miss.	184	94	80	67½	56½	47½	40
Canton, Miss.	207	107½	92½	71½	64	51½	44
Grenada, Miss.	295	121½	100	84	71½	57½	49
Sardis, Miss.	345	124	102½	87½	72½	59	50
Memphis, Tenn.	395	81½	62½	56½	44	37½	31½

It will be observed that the rates from New Orleans to Hazelhurst, Miss., 150 miles, are higher than those to Memphis, 395 miles.

In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the east-side lines were authorized to continue rates from Ohio river crossings and from St. Louis to Memphis, Vicksburg, New Orleans, and other river points lower than the rates to intermediate points. The evidence indicated, however, that water competition was rapidly dwindling in importance.

In *Rates from New Orleans and Galveston*, 44 I. C. C., 727, we held that the maintenance of lower rates from New Orleans to Kansas City than to intermediate points was not compelled by water competition and observed that "there is nothing to indicate that since that time (1900) the adjustment of these rates has not been entirely

within the control of the rail lines." Applications for relief predicated upon water competition were accordingly denied.

At the earlier hearings in this investigation certain of the individual railroads introduced testimony in support of the fourth section applications, the general tenor of which was to the effect that the actual and potential water competition along the Mississippi River justifies the depressed rates at river points. At the last hearing, however, the United States Railroad Administration stated that it did not desire to defend the applications and expressly requested that any evidence theretofore submitted in justification of the departures on the ground of water competition be withdrawn and not considered.

Even before this announcement of the United States Railroad Administration's policy it was apparent that the lines operating on the west side of the Mississippi River were not desirous of continuing the depressed rates, and as the hearing progressed it became evident that they were endeavoring to justify their fourth section applications, not because they felt that it was actually necessary to depress the rates to meet water competition, but because it was the policy of the Illinois Central Railroad to continue the depressed rates, and the west-side lines were obliged to meet the rates so made or retire from the business.

For more than 25 years there has been no through boat service between St. Louis and New Orleans except at rare intervals. At the present time there is not a boat operating between those points except the fleet operated by the United States Railroad Administration, which consists of five towboats and a number of barges. These boats run on a regular weekly schedule between St. Louis and New Orleans, stopping only at Memphis. It is planned to make stops at other river points as soon as necessary arrangements can be made. Grain is the most important commodity handled southbound, but there is a movement of merchandise traffic. Northbound the movement consists principally of sugar, coffee, and general merchandise.

The record does not show to what extent, if any, the United States Railroad Administration plans further to develop water-borne commerce on the Mississippi River. An impression prevailed generally at the hearing, however, that it is planned to develop this commerce on an extensive scale. The record shows that cities along the river are spending or planning to spend large sums of money for the acquisition and construction of water-front facilities to accommodate a greatly increased movement of water-borne freight, and it is clearly the expectation of those familiar with the situation that there will be within the next year or two an unprecedented increase in the river traffic. It is expected, however, that all of the freight moving on

the river will be handled by the government's line. So far as the record shows, no new independent lines are planned.

Aside from the fleet operated by the government there is little traffic now moving on the Mississippi River.[1] The through independent boat service is not of such a character as to compel the depression of the all-rail rates between river points.

Orders will be entered denying relief from the long-and-short-haul provision of the fourth section between points on the Mississippi River, St. Louis, and south, to the extent here in issue. The question as to the reasonableness of the rates in the territory east of the Mississippi River has not been adequately considered, and nothing said herein is to be regarded as a definitive finding as to the proper level of those rates. The denial orders to be entered are not in keeping with our previous permissive orders relating to rates at points on the Mississippi River. If these denial orders were to become effective, certain other points would continue to enjoy rates deviating from the long-and-short-haul rule of the fourth section. This would create a rate maladjustment which seemingly ought to be avoided. Sufficient time, therefore, before the effective date of the denial orders to be entered herein will be given to afford interested parties opportunity to bring to our attention the reasons, if any, for the reconsideration of outstanding permissive orders according relief from the long-and-short-haul rule of the fourth section.

Our order in the *Natchez Case* provided generally that the carriers in applying the Natchez scale might depart from the fourth section at intermediate points on circuitous routes, while meeting at competitive points the rates made by direct lines. The following paragraph was provided to cover instances of this character:

> When two or more routes of railroad composed of lines parties to this tariff shall be in operation between shipping point and point of destination, the lowest rate shown in this tariff applicable via any of such routes shall be applied via the other routes accepting the freight for transportation between such points.

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[1] As previously stated, there was not at the time of the hearing, April, 1919, a single boat under independent management plying between St. Louis and New Orleans; nor was there a single boat under independent management operating between Memphis and New Orleans, or between Memphis and Vicksburg, or between Vicksburg and New Orleans. There are no boats whatever, either under government or private management, operating in through service on the Missouri River, the fleet of the Kansas City-Missouri River Navigation Company, which recently ran between St. Louis and Kansas City, having been taken over by the government and placed in the St. Louis-New Orleans service.

The St. Louis & Memphis Transportation Company, an independent line, operates one boat a week between Memphis and St. Louis, making intermediate stops and carrying general-merchandise traffic. The Memphis & Rosedale Packet Company operates one boat weekly between Memphis and Rosedale, Miss., stopping at Helena, Ark., and Friars Point, Miss. The Lee Line also runs one steamer weekly between Memphis and Friars Point. The Bradford Packet Company operates one boat between New Orleans and Baton Rouge, La., and the Carter Packet Company one boat between New Orleans and Angolia, La.

The carriers ask that fourth section relief be accorded to circuitous lines in the present case in instances where the uniform scale is applied via the direct line. No objection was made to this proposal at the hearing and the relief will be granted. The rates from or to intermediate points need not be affected, except that they may not exceed the distance scale of rates prescribed herein for like distances, or the lowest combination.

There are a number of instances where, under the present adjustment, rates made by the application of the uniform scale would be cut by combinations on the Mississippi River crossings. For example, a rate made according to the scale from Natchez to a point in interior Arkansas might be somewhat higher than the corresponding rate made by combination on Memphis. Whether this situation will continue to the same extent in the future depends in large measure upon the final determination of the rate adjustment along the Mississippi River. In instances where, by reason of combinations on Mississipi River crossings, the rates approved in this report can not be applied by west-side carriers without surrendering the traffic to competing lines, fourth section relief will be granted to the west-side carriers whose lines exceed by 115 per cent the length of the rate-making line in order to permit them to meet such combination rates at competitive points while observing at intermediate points the rates approved herein.

COMPLAINT OF THE PUBLIC UTILITIES COMMISSION OF KANSAS.

Closely related to the issues presented by the fourth section applications involving depressed rates along the Mississippi valley are certain other issues raised by the formal complaint of the Public Utilities Commission of Kansas, Docket No. 6119, and associated cases. These complaints bring into issue the propriety of class and commodity rates from New Orleans to Wichita, Salina, and other interior points in Kansas and Oklahoma as compared with the rates to Kansas City and other Missouri River points. Class rates between New Orleans and Kansas points are essentially "paper" rates, and shippers are interested in them principally because of their possible influence in determining the level of the commodity rates.

The rail routes from New Orleans to Kansas City may be divided into three groups: First, two short routes, consisting of the line of the Louisiana Railway & Navigation Company from New Orleans to Shreveport and the line of the Kansas City Southern from Shreveport to Kansas City, a total distance of 868 miles, and the lines of the Illinois Central and the Frisco via Memphis, 878 miles, which routes will be referred to hereinafter as the direct routes; second,

certain circuitous routes through Oklahoma and southern Kansas, including those of the Rock Island, the Santa Fe, and the Missouri, Kansas & Texas, which will be referred to hereinafter as the Oklahoma routes; and, third, certain circuitous routes lying east of the direct routes, such as those through St. Louis, which will be designated the eastern routes.

Via the eastern routes the class and commodity rates from New Orleans are not generally higher to intermediate points than to Kansas City and the other Missouri River cities. Via the direct routes and the Oklahoma routes, on the other hand, the commodity rates to the Missouri River cities have been for many years much lower than the rates to intermediate points. This relative adjustment has long been unsatisfactory to shippers located at such points as Wichita, Coffeyville, Salina, Hutchinson, and other jobbing cities in southern Kansas and Oklahoma, who contend that the lower rates to the Missouri River cities give an undue preference to the jobbers there located.

In *Rates from New Orleans and Galveston*, 44 I. C. C., 727, we considered the various fourth section applications by which the interested carriers asked authority to continue to charge lower rates from New Orleans to the Missouri River cities than to intermediate points, and held that via the direct routes the rates should conform to the long-and-short-haul provision of the fourth section, but the Oklahoma lines were permitted to continue lower rates to the Missouri River cities, provided that Caldwell, Anthony, and Arkansas City, located in southern Kansas near the Oklahoma line, were accorded rates not in excess of those contemporaneously maintained to Kansas City, and with the further proviso that the rates to points in southern Kansas lying between the points above named and Kansas City should be graded up in the manner prescribed in the report.

In *Public Utilities Commission of Kansas* v. *A. & V. Ry. Co.*, 44 I. C. C., 743, decided on the same date as the case cited in the preceding paragraph, we considered several complaints filed on behalf of the cities of southern Kansas in which it was generally alleged that the rates from New Orleans to the southern Kansas points were unreasonable, unduly prejudicial to those points, and unduly preferential of Kansas City and other Missouri River cities. We held, in effect, that it was unnecessary to pass upon the reasonableness *per se* of the rates because the record showed that the complainants were primarily interested in the relative adjustment, and because it was anticipated that the realignment of the rates as required in the report disposing of the fourth section applications would bring about the relative adjustment desired by the complainants.

This hope was not realized. The Oklahoma lines, finding that their continued participation in the lower rates to the Missouri River cities and a realignment of the rates to points in southern Kansas on the basis prescribed by us would result in substantial reductions in rates to the latter points, decided to withdraw from the Missouri River traffic, as far as commodity rates are concerned, and fifteenth section applications were accordingly filed restricting the application of the New Orleans–Missouri River commodity rates to the direct routes and the eastern routes. This had the effect of continuing the low rates to Kansas City via certain routes and of continuing the relatively high rates to intermediate points on the Oklahoma routes, thus depriving the cities in southern Kansas of the relative adjustment which they sought and which would have been established under our order if the Oklahoma lines had elected to continue their participation in the lower rates to the Missouri River cities. At the instance of the Public Utilities Commission of Kansas these various formal complaints and fourth section applications were reopened and consolidated with this investigation.

The Public Utilities Commission of Kansas, complainant in one of the cases, and the cities of southern Kansas on whose behalf the other complaints were brought, contend that the cancellation of the rates via the Oklahoma routes is a mere device on the part of the Oklahoma lines to circumvent our order and to deny to southern Kansas the relative adjustment which was expected to follow our decisions in the two cases above cited. These complainants point out that it is proposed to continue the lower rates to the Missouri River cities via the eastern routes, though these are in some instances quite as circuitous as the Oklahoma routes.

The Oklahoma lines contend, on the other hand, that there was nothing in our order to require a continued departure from the long-and-short-haul rule; that their withdrawal from participation in the lower commodity rates to the Missouri River cities is a literal compliance with our order; that the maintenance by the direct lines and the eastern lines of low rates to the Missouri River cities is a matter over which the Oklahoma lines have no control; that if the rates to the cities in southern Kansas are reasonable *per se* the representatives of those cities may not properly accuse the Oklahoma lines of maintaining an adjustment that either prefers unduly the Missouri River cities or prejudices unduly the points in southern Kansas.

In the following table the distances from New Orleans to Kansas City via the two direct lines are compared with those via the Oklahoma routes and via the eastern routes:

Distances from New Orleans, La., to Kansas City, Mo.

	Miles.	Per cent of short line.
Via direct routes:		
L. R. & N. to Shreveport, K. C. S	868	100.0
Ill. Cent. to Memphis, Frisco	878	101.1
Via Oklahoma routes:		
T. & P. to Ferriday, Mo. Pac	976	112.4
L. R. & N. to Shreveport, M., K. & T	940	108.3
T. & P., Ft. Worth, Santa Fe	1,151	132.6
T. & P., Ft. Worth, Rock Island	1,139	131.2
Via eastern routes:		
Ill. Cent., St. Louis, Wabash	995	114.7
Ill. Cent., St. Louis, C. & A	1,041	120.0
M. & O., St. Louis, C. & A	1,047	120.0
Ill. Cent., St. Louis, C., B. & Q	1,064	122.6
M. & O., St. Louis, M., K. & T	1,097	126.4
M. & O., St. Louis, Frisco	1,164	134.1
L. & N., St. Louis, Wabash	1,222	140.7

In the following table the relative class-rate adjustment is shown:

From New Orleans, La., to—	Miles.	Class rates, in cents per 100 pounds.									
		1	2	3	4	5	A	B	C	D	E
Ada, Okla	625	130	111	97	90	70	74	61	48	39	34.5
Tulsa, Okla	679	140	120.5	97	90	70	74	61	47	39	34.5
Enid, Okla	798	142.5	120.5	97	90	70	74	61	48	39	34.5
Arkansas City, Kans	792	145	123	104	95	75	72	60	47	38	34
Coffeyville, Kans	777	137	119	94	77	56	60	50	38	32	29.5
Wichita, Kans	843	139.5	121	104	93	74	72	59	47	38	34
Salina, Kans	980	137	121	104	85	65	69	58	44	37	33
Hutchinson, Kans	892	139.5	121	104	93	74	75	61	48	40	35
Kansas City, Kans	868	110	85	65	53	38	42	37	27	24	23

The lower rates to Kansas City and other Missouri River points than the corresponding rates contemporaneously maintained to intermediate points in Kansas and Oklahoma are attributable at least in part to combinations on St. Louis. The factor from New Orleans to St. Louis has been depressed for many years. If continuance of depressed rates from New Orleans to St. Louis is not justified by any competitive conditions, it would seem that there is no longer any justification for maintaining lower rates to Kansas City than the rates contemporaneously maintained to competing points in Kansas.

The carriers proposed largely to eliminate the fourth section departures with respect to class rates by increasing the New Orleans-Missouri River rates as follows:

From—	Class rates, in cents per 100 pounds.									
	1	2	3	4	5	A	B	C	D	E
New Orleans to Kansas City:										
Present	110	85	65	53	38	42	37	27	24	23
Proposed	147	125	104	96	75	79	70	58	45	39
New Orleans to Omaha:										
Present	115	90	69	57	41	45	40	30	27	26
Proposed	162	137	113	103	79	84	74	62	50	42

It is also proposed to regroup the destinations generally. The proposed $1.47 group would embrace not only Kansas City, but a large territory in southeastern Kansas and northern and central Oklahoma.[1] The average short-line distance from New Orleans to the Kansas points grouped with Kansas City is given as 827 miles, and to the Oklahoma points in the same group 742 miles. That the proposed $1.47 scale is not unreasonably high is indicated by the fact that in *Railroad Commission of Texas* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, we approved a $1.47 scale for an average distance of 800 miles from St. Louis to Texas common points. The Shreveport scale extended gives a first-class rate of $1.495 for the short-line distance from New Orleans to Kansas City. The rates from Kansas City to Texas common points are on a $1.47 basis, and via certain of the western routes the Texas common points are intermediate to New Orleans. We find that a $1.47 scale plus 25 per cent from New Orleans to Kansas City is a reasonable maximum scale. To determine rates for the lower classes the percentages herein approved should be employed. No finding is made as to southbound rates.

The existing rate structure must be revised in such a way as to remove the disadvantage under which the intermediate cities in Kansas and Oklahoma are now laboring. We find that the class rates from New Orleans to Arkansas City and Caldwell should not exceed the class rates to Kansas City and that to points north and east of Arkansas City and Caldwell the class rates should not exceed those to Arkansas City and Caldwell by differentials in excess of the following for each 100 miles:

Classes	1	2	3	4	5	A	B	C	D	E
Differentials	10	9	7	6	5	5	4	3	3	2

These differentials are to be added to the rates as plussed, but are not themselves to be increased.

Without undertaking to prescribe a complete structure of class rates from New Orleans to points in Oklahoma we find that if the rates from New Orleans to Kansas City are to be on a $1.47 basis the rates to typical Oklahoma points should not exceed the following:

From New Orleans to Oklahoma points.	First-class rate.[2]	From New Orleans to Oklahoma points.	First-class rate.[2]
Poteau	1.26	Tulsa	1.34
Ardmore	1.28	Oklahoma City	1.40
Ada	1.28	Guthrie	1.42
Muskogee	1.28	Enid	1.44
Shawnee	1.34		

[1] The proposed $1.47 scale would apply in both directions via the direct routes and the Oklahoma routes. An anomalous situation results from the fact that the eastern lines, while joining in the proposal to apply the $1.47 scale northbound, insisted upon continuing southbound the present basis of $1.15, governed by southern classification.

[2] The 25 per cent increase not included. Rates for lower classes to be determined by observing the approved percentages.

The following table shows how the rates on representative commodities from New Orleans to Kansas City compare with the corresponding rates to intermediate points in Kansas:

From New Orleans to—	Short-line distance.	Bags and bagging, c. l.	Canned goods, c. l.	Cotton piece goods, any quantity.	Sugar, c. l.
	Miles.				
Kansas City	868	28	38	65	33.9
Arkansas City	793	55	54	128	40
Independence	776	53	50	104.5	38
Topeka	905	43	48	94	40
Wichita	844	55	54	121	40

The marked advantage enjoyed by Kansas City as disclosed in the preceding table is the underlying basis of the Kansas complaints. Kansas City's advantage is not justified by differences in transportation conditions, and the complaining cities are entitled to a finding of undue prejudice. As tending to show that, even in the judgment of the carriers, points in southeastern Kansas and northern Oklahoma are entitled to rates that are fairly related to the Kansas City rates, attention is called to the fact that the class rates proposed by the carriers to these points are either on the Kansas City basis or but slightly higher.

We find that the rates on the following commodities, namely, alcohol, denatured, in carloads; bags, burlap, gunny or jute, and burlap bagging, in bales, straight or mixed carloads; brown cotton bagging, in carloads; canned goods, in carloads; coffee, green, carloads; coffee, roasted, in carloads; cotton piece goods, any quantity; knitting-factory products, any quantity; rice, in carloads; rosin, in carloads; straw hats, originating in Mexico, any quantity; and turpentine, in carloads, from New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, all in the state of Kansas, are now and for the future will be, so long as the lines from New Orleans to Kansas City are operated as a single system and not in competition, unduly prejudicial to the points named and unduly preferential of Kansas City, Mo., to the extent that the said rates to the said points are in excess of the following percentages of the corresponding rates contemporaneously maintained from New Orleans to Kansas City: Wichita, Salina, and Hutchinson, 110 per cent; Topeka, 105 per cent. There should be a corresponding adjustment to neighboring related points.

We further find that the rates on canned goods, rice and bags and bagging, in carloads, and cotton piece goods, any quantity, from New Orleans to Enid, Oklahoma City, and Shawnee, all in the state of Oklahoma, are now and for the future will be, so long as the

lines from New Orleans to Kansas City are operated as a single system and not in competition, unduly prejudicial to the points named and unduly preferential of Kansas City, Mo., to the extent that the said rates exceed the following percentages of the corresponding rates contemporaneously maintained from New Orleans to Kansas City: Enid, 100 per cent; Oklahoma City, 96 per cent; Shawnee, 92 per cent.

Closely related to the above issues are those presented by other fourth section applications whereby the carriers constituting the western routes seek authority to continue lower commodity rates from New Orleans to certain interior points in Kansas, such as Wichita, than the corresponding rates contemporaneously maintained to intermediate points in Oklahoma. Under the present adjustment many of the rates from New Orleans to interior Kansas points made by combination on St. Louis or Kansas City are lower than the rates which the western lines feel justified in maintaining to intermediate points in Oklahoma. In view of the fact that the routes through St. Louis are circuitous, and in view of our conclusion that the continuance of depressed rates on the ground of water competition is not justified at present, there is apparently no good reason why the rates from New Orleans to points in Oklahoma should exceed the corresponding rates to more distant points in Kansas. Fourth section applications by which the carriers parties thereto seek authority to continue class and commodity rates from New Orleans to Wichita, Arkansas City, and Caldwell, lower than the corresponding rates contemporaneously maintained from New Orleans to points in Oklahoma intermediate to the said Kansas points will be denied.

THE RELATIONSHIP BETWEEN KANSAS CITY, OMAHA, AND SIOUX CITY.

The class rates from New Orleans to Omaha should bear an appropriate relation to the class rates approved herein from New Orleans to Kansas City; and similarly, the class rates from New Orleans to Sioux City should bear a proper relation to the class rates to Omaha. The first-class rate from New Orleans to Omaha may exceed the New Orleans-Kansas City rate, as increased 25 per cent, by 15 cents; and the first-class rate from New Orleans to Sioux City may exceed the Omaha rate by 8 cents. The 25 per cent increase will be applied to the New Orleans-Kansas City rate of $1.47, the differential added, and the rates for the lower classes will be scaled on the approved percentages. The 25 per cent increase will not be added to the differentials.

PROPOSED CLASS RATES FROM NEW ORLEANS TO ARKANSAS.

The class rates between New Orleans and Arkansas have for years been on a relatively low basis. This can be shown by taking Little Rock as a typical destination. The distance from New Orleans to Little Rock via Alexandria and the Rock Island is 460 miles, and the class rates have been on a $1 scale.[1] The haul between these two points via the direct lines is almost entirely through territory in which the Shreveport scale applies. Under the Shreveport scale the first-class rate for 460 miles, including the river crossing, would be $1.20. The carriers propose $1.25. The rates from St. Louis to Little Rock, 349 miles, have for years been on a $1 scale. The evidence shows that the New Orleans-Little Rock rates were arbitrarily placed on the $1 basis to equalize New Orleans with St. Louis, in spite of the latter's advantage of 111 miles in distance. Under these circumstances it would apparently be proper to approve a reasonable increase in the New Orleans-Little Rock rates.

In *Natchez Chamber of Commerce* v. *L. & A. Ry. Co.*, 52 I. C. C., 105, we established the Shreveport scale from New Orleans to points in northern Louisiana and southern Arkansas. The construction of rates to central and northern Arkansas therefore involves nothing more than an extension of what we have already done. We find that the New Orleans-Little Rock rates should be on a $1.20 scale, this not including the 25 per cent increase. The Little Rock group is very large in extent, and should be substantially reduced in size. A reasonable gradation should be made between the Arkansas-Louisiana line and Little Rock.

FINDINGS SUMMARIZED.

For convenience the principal conclusions reached herein may be summarized as follows:

(1) The class rates set out in Appendix No. 1 to this report are, for distances not in excess of 350 miles, except as otherwise indicated, reasonable maximum rates for interstate application (a) between points in Arkansas and points in Missouri located in what is commonly known and designated as "B" territory; (b) between points in Oklahoma and points in Missouri located in what is commonly known and designated as "B" territory; (c) between points in Arkansas and points in Oklahoma.

(2) The following are reasonable maximum bridge tolls for the Mississippi River crossing at Memphis:

Classes	1	2	3	4	5	A	B	C	D	E
Tolls	3	3	3	2	2	2	1½	1½	1½	1½

(3) Interstate class rates between Memphis and all points in the state of Arkansas located on the line or lines of the Chicago, Rock Island & Pacific Railway Company, St. Louis Southwestern Railway Company, St. Louis-San Fran-

[1] There is apparently a route approximately 20 miles shorter via Jackson, Miss., and Tallulah, La.

cisco Railway Company, and St. Louis, Iron Mountain & Southern Railway Company (now part of the Missouri Pacific), are now and for the future will be unreasonable to the extent that they exceed by more than the reasonable bridge tolls shown in the last preceding paragraph the rates shown in Appendix No. 1.

(4) Traffic moves between Memphis and points in the state of Arkansas under transportation conditions that are substantially similar, except for the river crossing, to the conditions governing the corresponding movement of traffic within the state of Arkansas.

(5) Interstate class rates between Memphis and all points in the state of Arkansas located on the line or lines of the railroads named in the second preceding paragraph are now and for the future will be unduly prejudicial to Memphis and to shippers there located and unduly preferential of points in the state of Arkansas and of intrastate traffic in Arkansas, to the extent that the said interstate rates exceed or may exceed by more than reasonable bridge tolls the corresponding class rates or less-than-carload commodity rates contemporaneously maintained for like distances upon intrastate traffic in the state of Arkansas; and any greater difference or disparity between the said interstate and intrastate rates causes and would cause an undue burden upon interstate commerce.

(6) The interstate class rates from Memphis to all points in the state of Missouri located on and south of the St. Louis-San Francisco Railway running from Cape Girardeau, Mo., through Mingo, Mo., to Springfield, Mo., are now and for the future will be unreasonable to the extent that they exceed or may exceed by more than reasonable maximum bridge tolls the rates shown in Appendix No. 1, which rates so made we find to be reasonable maximum rates.

(7) Traffic moves from Memphis to points in southern Missouri under transportation conditions that are substantially similar, except for the river crossing, to the corresponding movement of traffic from St. Louis to points in southern Missouri.

(8) The interstate class rates from Memphis, to all points in the state of Missouri on and south of the line designated in the second preceding paragraph are now and for the future will be, unduly prejudicial to Memphis and to shippers there located, and unduly preferential of St. Louis and of shippers there located, to the extent that the said interstate class rates exceed or may exceed by more than the reasonable maximum bridge tolls prescribed herein the corresponding intrastate or interstate class rates contemporaneously maintained from St. Louis to the same points for like distances; and any greater difference or disparity between the rates from Memphis and St. Louis to said destinations causes and would cause an undue burden upon interstate commerce from Memphis.

(9) The interstate class rates from Memphis to all points in the state of Arkansas located on the lines of the Chicago, Rock Island & Pacific Railway Company, St. Louis Southwestern Railway Company, St. Louis-San Francisco Railway Company, and St. Louis, Iron Mountain & Southern Railway Company (now part of the Missouri Pacific), are now and for the future will be unduly prejudicial to Memphis and to shippers there located and unduly preferential of St. Louis and of shippers there located to the extent that they exceed or may exceed by more than the reasonable maximum bridge tolls prescribed in this report, the corresponding class rates contemporaneously maintained from St. Louis to the same destinations for like distances.

(10) The rates and practices of the Missouri Pacific governing the concentration of Arkansas cotton at Memphis are not shown to be unduly prejudicial to

Memphis or otherwise unlawful, but a uniform basis of constructing the rates should be devised.

(11) The practice of the St. Louis, Iron Mountain & Southern (now part of the Missouri Pacific) and of the Cotton Belt, in imposing a greater charge for the delivery of cotton at compresses located on the Union Railway in Memphis than the corresponding charge, if any, contemporaneously maintained for the delivery of cotton at East St. Louis, is unduly prejudicial to Memphis and unduly preferential of East St. Louis.

(12) The class rates prescribed in Appendix No. 1 are reasonable maximum rates for application from St. Louis to Hot Springs, Malvern, Prescott, Camden, Fordyce, El Dorado, Warren, Monticello, McGehee, Arkansas City, and other jobbing centers similarly located in southern Arkansas on the lines of the Chicago, Rock Island & Pacific Railway Company, St. Louis Southwestern Railway Company, St. Louis-San Francisco Railway Company, and St. Louis, Iron Mountain & Southern Railway Company (now part of the Missouri Pacific).

(13) Class rates from St. Louis to the points mentioned in the last preceding paragraph are now and for the future will be unduly prejudicial to said points and unduly preferential of Pine Bluff and Little Rock to the extent that they exceed or may exceed the corresponding rates contemporaneously maintained to Pine Bluff and Little Rock for like distances.

(14) The class rates from Natchez for distances not in excess of 350 miles to points on class A railroads in the state of Arkansas are now and for the future will be unreasonable to the extent that they exceed or may exceed by more than reasonable maximum charges for the Mississippi River crossing, the class rates for corresponding distances shown in Appendix No. 1, except as they already coincide therewith; provided, however, that the additional charges for the river crossing shall be determined by adding to the actual distances not more than 20 constructive miles, which rates so made we find to be reasonable maximum rates.

(15) Traffic from Natchez to points in Arkansas moves under transportation conditions that are substantially similar to those governing the corresponding movement from Little Rock, except for the river crossing, and from Memphis.

(16) The class rates from Natchez for distances not in excess of 350 miles to points in Arkansas are unduly prejudicial to Natchez and shippers there located and unduly preferential of Little Rock and of intrastate traffic in Arkansas, to the extent that they exceed by more than said reasonable charges for the river crossing, the corresponding class rates contemporaneously maintained from Little Rock to the same destinations for like distances; and the class rates from Natchez to points in Arkansas are unduly prejudicial to Natchez and unduly preferential of Memphis to the extent that the said rates from Natchez exceed by more than the difference in said crossing charges at Memphis and Natchez as prescribed herein, the corresponding rates contemporaneously maintained from Memphis to the same destinations for like distances; and any greater difference or disparity in the rates causes and would cause an undue burden upon interstate commerce from Natchez.

(17) The interstate class rates from Monroe, La., and from Shreveport, La., to all points on the following class A railroads, Chicago, Rock Island & Pacific Railway Company; Missouri Pacific Railroad Company; and St. Louis Southwestern Railway Company, in the state of Arkansas, located on and south of a line drawn through Hope, Gurdon, Fordyce, and Arkansas City are now

and for the future will be unreasonable to the extent that they exceed or may exceed the rates set out in Appendix No. 1, except as they already coincide therewith.

(18) The transportation conditions governing the movement of traffic from Monroe and from Shreveport to the said points in Arkansas are substantially similar to those governing intrastate traffic in Arkansas.

(19) The said interstate class rates are unduly prejudicial to Monroe and to Shreveport and to shippers there located and unduly preferential of Little Rock, Pine Bluff, Camden, Monticello, and Dermott, all in the state of Arkansas, to the extent that they exceed or may exceed for like distances the corresponding intrastate class or less-than-carload commodity rates contemporaneously maintained from the said Arkansas points to the same destinations.

(20) Class rates from points in western trunk line territory are not shown to be undulv prejudicial to Fort Smith, or unduly preferential of Muskogee or other points in Oklahoma.

(21) Class and commodity rates from the defined territories known and designated as Raleigh, Carolina, and Middlesborough territories to all points in the state of Arkansas are now and for the future will be unduly prejudicial to points in the state of Arkansas and unduly preferential of points in the state of Oklahoma to the extent that said rates to Arkansas points exceed or may exceed the corresponding rates contemporaneously maintained from the said defined territories to points in the state of Oklahoma. The class rates from the said defined territories to Arkansas points should be as much less than the corresponding rates to eastern Oklahoma as the rates from Macon territory to Fort Smith, Ark., are less than the corresponding rates to points in eastern Oklahoma, and should not exceed the combination of intermediate rates. The defendants should publish and maintain from all points in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee to all points in the state of Arkansas as favorable rates and bases therefor as are contemporaneously maintained and applied from the said defined territories to points in Oklahoma.

(22) The following are reasonable maximum class rates between Memphis and Kansas City, the 25 per cent increase being included:

Classes	1	2	3	4	5	A	B	C	D	E
Rates	120	102	84	72	58	62	48	42	36	30

(23) Proposed increased class rates from St. Louis to points in Oklahoma not allowed.

(24) Fourth section relief between points on the Mississippi River, St. Louis and south, denied.

(25) A scale of class rates from New Orleans to Kansas City beginning with $1.47 for first class is a reasonable maximum scale, the 25 per cent increase not included.

(26) Class rates from New Orleans to Arkansas City and Caldwell should not exceed the class rates to Kansas City, and to points north and east of Arkansas City and Caldwell the class rates should not exceed those to Arkansas City and Caldwell by differentials in excess of the following for each 100 miles:

Classes	1	2	3	4	5	A	B	C	D	E
Differentials	10	9	7	6	5	5	4	3	3	2

(27) If the rates from New Orleans to Kansas City are to be on a $1.47 basis the rates to typical Oklahoma points should not exceed the following:

From New Orleans to Oklahoma points.	First-class rate.[1]	From New Orleans to Oklahoma points.	First-class rate.[1]
Poteau	1.26	Tulsa	1.34
Ardmore	1.28	Oklahoma City	1.40
Ada	1.28	Guthrie	1.42
Muskogee	1.28	Enid	1.44
Shawnee	1.34		

[1] The 25 per cent increase not included.

(28) Rates on alcohol, denatured, in carloads; bags, burlap, gunny or jute, and burlap bagging, in bales, straight or mixed carloads; brown cotton bagging, in carloads; canned goods, in carloads; coffee, green, in carloads; coffee, roasted, in carloads; cotton piece goods, any quantity; knitting-factory products, any quantity; rice, in carloads; rosin, in carloads; straw hats, originating in Mexico, any quantity; and turpentine, in carloads, from New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, all in the state of Kansas, are now and for the future will be, so long as the lines from New Orleans to Kansas City are operated as a single system and not in competition, unduly prejudicial to the points named and unduly preferential of Kansas City, Mo., to the extent that they are in excess of the following percentages of the corresponding rates from New Orleans to Kansas City: Wichita, Salina, and Hutchinson, 110 per cent; Topeka, 105 per cent.

(29) Rates on canned goods, rice, bags and bagging, in carloads, and cotton piece goods, any quantity, from New Orleans to Enid, Oklahoma City, and Shawnee, Okla., are now and for the future will be, so long as the lines from New Orleans to Kansas City are operated as a single system and not in competition, unduly prejudicial to the points named and unduly preferential of Kansas City, Mo., to the extent that they exceed the following percentages of the corresponding rates from New Orleans to Kansas City; Enid, 100 per cent; Oklahoma City, 96 per cent; Shawnee, 92 per cent.

(30) Fourth section applications seeking authority to continue class and commodity rates from New Orleans to Wichita, Arkansas City, and Caldwell, lower than the corresponding rates from New Orleans to points in Oklahoma intermediate to the said Kansas points denied.

(31) A scale of class rates beginning with $1.20 first class approved from New Orleans to Little Rock, Ark., not including the 25 per cent increase.

(32) Class rates from New Orleans to Omaha should be constructed on a basis not exceeding 15 cents, first class, over Kansas City; and class rates from New Orleans to Sioux City on a basis not exceeding 8 cents, first class, over Omaha. These differentials are to be added to the rates as plussed, but are not themselves to be increased.

WOOLLEY, *Commissioner*, concurring:

I concur in this report because it goes a long way toward the elimination of discriminations, principally through the establishment of a mileage scale of class rates and the denial of applications for permission to continue in effect lower rates between Mississippi River points than to and from intermediate points. The great extent of the territory in which the mileage scale of class rates will apply makes it the more regrettable, from my point of view, that we are not using what I regard as a more logical and scientific basis, for to avoid discriminations between hauls of varying lengths under a

mileage scale it should be certain that the initial rates (in this case for 10 miles or less) are sufficient to pay not only the actual cost of terminal and line-haul services but also a reasonable amount for overhead, and further that with the increase of distance there shall be no more than a reasonable increase in the rates. It is questionable whether the minimum rates in our scale will pay even the out-of-pocket terminal costs, and if they do not is it not obvious that there must be a discriminatory rate of increase, in order that longer-haul traffic may make up for the failure of short-haul traffic to pay its proper share of the cost of transportation? It seems to me that in taking so long a step toward uniformity of charges in an extensive territory we should have in mind the fixing of rates which, as a basis at least, will have the possibility of permanency, and in my view this element would seem lacking in a scale which starts too low and, in order to produce a reasonable total revenue, increases more rapidly than would a scale based upon initial rates sufficiently high to pay actual expenses and something for overhead.

COMMISSIONER HALL, while concurring in the main, dissents as to certain features and conclusions of this report. His separate expression will be made later.

APPENDIX No. 1.

Maximum scale prescribed for application in the southwest as provided in this report. For single-line application only. The 25 per cent increase not included. SEE NOTE.

Miles.	1	2	3	4	5	A	B	C	D	E
10 and less	23	19	16	14	10	10	8	7	6	5
15 and over 10	25	21	17.5	15	11	12	9	8	7	6
20 and over 15	27	23	19	16	12	13	10	9	8	6
25 and over 20	29	25	20	17	14	15	11.5	10	8.5	7
30 and over 25	30.5	26	21	18	15	16	12	11	9	7.5
35 and over 30	32	27	22	19	15.5	16.5	13	11	9.5	8
40 and over 35	33.5	28.5	23.5	20	16	17	13.5	11.5	10	8.5
45 and over 40	35	29.5	24.5	21	17	18	14	12	10.5	9
50 and over 45	36.5	31	25.5	22	17.5	18.5	14.5	12.5	11	9
55 and over 50	38	32	26.5	23	18	19	15	13	11.5	9.5
60 and over 55	39.5	33.5	27.5	24	19	20.5	16	13.5	12	10
65 and over 60	41	35	28.5	24.5	19.5	21	16.5	14	12.5	10
70 and over 65	42.5	36	29.5	25.5	20	22	17	14.5	13	10.5
75 and over 70	44	37.5	31	26.5	21	23	17.5	15.5	13	11
80 and over 75	45.5	38.5	32	27.5	22	23.5	18	16	13.5	11.5
85 and over 80	47	40	33	28	22.5	24.5	19	16.5	14	12
90 and over 85	48.5	41	34	29	23	25	19.5	17	14.5	12
95 and over 90	50	42.5	35	30	24	26	20	17.5	15	12.5
100 and over 95	51.5	43.5	36	31	24.5	27	20.5	18	15.5	13
105 and over 100	53	45	37	32	25.5	27.5	21	18.5	16	13
110 and over 105	54.5	46	38	32.5	26	28	22	19	16.5	13.5
115 and over 110	56	47.5	39	33.5	27	29	22.5	19.5	17	14
120 and over 115	57.5	48.5	40	34.5	27.5	30	23	20	17	14
125 and over 120	59	50	41	35.5	28.5	30.5	23.5	20.5	17.5	15
130 and over 125	60.5	51.5	42.5	36.5	29	31.5	24	21	18	15
135 and over 130	62	53	43.5	37	30	32	25	21.5	18.5	15.5
140 and over 135	63.5	54	44.5	38	30.5	33	25.5	22	19	16
145 and over 140	65	55	45.5	39	31	34	26	22.5	19.5	16
150 and over 145	66.5	56.5	46.5	40	32	35	26.5	23	20	16.5
160 and over 150	69	58.5	48	41.5	33	36	27.5	24	20.5	17
170 and over 160	71	60	49.5	42.5	34	37	28.5	24.5	21.5	17.5
180 and over 170	73	62	51	44	35	38	29	25.5	22	18
190 and over 180	75	64	52.5	45	36	39	30	26	22.5	18.5
200 and over 190	77	65.5	54	46	37	40	31	27	23	19
210 and over 200	79	67	55.5	47.5	38	41	31.5	28	23.5	19.5
220 and over 210	81	68.5	56.5	48.5	39	42	32.5	28.5	24.5	20
230 and over 220	83	70.5	58	50	40	43	33	29	25	20.5
240 and over 230	85	72	59.5	51	41	44	34	30	25.5	21
250 and over 240	87	74	61	52	42	45	35	30.5	26	21.5
260 and over 250	89	75.5	62.5	53.5	42.5	46.5	35.5	31	26.5	22.5
280 and over 260	93	79	65	56	44.5	48.5	37	32.5	28	23.5
300 and over 280	96	81.5	67	57.5	46	50	38.5	33.5	29	24
320 and over 300	99	84	69.5	59.5	47.5	51.5	39.5	34.5	29.5	25
340 and over 320	102	86.5	71.5	61	49	53	41	35.5	30.5	25.5
360 and over 340	105	89.5	73.5	63	50.5	54.5	42	37	31.5	26.5
380 and over 360	108	92	75.5	65	52	56	43	38	32.5	27
400 and over 380	111	94.5	77.5	66.5	53.5	57.5	44.5	39	33.5	28
425 and over 400	114	97	80	68.5	54.5	59.5	45.5	40	34	28.5
450 and over 425	117	99.5	82	70	56	61	47	41	35	29.5
475 and over 450	120	102	84	72	57.5	62.5	48	42	36	30
500 and over 475	123	104.5	86	74	59	64	49	43	37	31
525 and over 500	126	107	88	75.5	60.5	65.5	50.5	44	38	31.5
550 and over 525	129	109.5	90.5	77.5	62	67	51.5	45	38.5	32.5
575 and over 550	132	112	92.5	79	63.5	68.5	53	46	39.5	33
600 and over 575	135	115	94.5	81	65	70	54	47.5	40.5	34

Arbitraries for extra line hauls.[1]

Class	1	2	3	4	5	A	B	C	D	E
Two or more lines	8	7	6	5	4	4	4	3	2	2

NOTE.—In all instances where the rates shown in this appendix are prescribed in the report or in the accompanying orders, it is understood that the said rates may be increased by 25 per cent.

[1] To apply only when the lines embraced in the route are not under a common ownership and control. The 25 per cent increase not to be added to the arbitraries.

APPENDIX No. 2.

Outline of certain evidence bearing upon the similarity of transportation conditions in the states of Kansas, Missouri, Arkansas, Oklahoma, Louisiana, and Texas.

SECTION A.—KANSAS CITY SOUTHERN. CHARGES TO MAINTENANCE OF WAY AND STRUCTURES DIVIDED BETWEEN STATES, AVERAGE PER MILE FOR FIVE YEARS ENDED JUNE 30, 1916.

	Missouri.	Kansas.	Arkansas.	Oklahoma.	Texas.	Louisiana.	K. C. S. system.
Superintendence	$101.51	$67.57	$82.54	$90.34	$66.07	$95.02	$89.45
Ballast	24.92	3.35	4.48	15.37	14.64	7.87	12.97
Ties	204.65	192.28	249.46	199.74	299.52	295.42	246.85
Rails	43.17	58.81	29.76	22.82	53.69	21.37	33.03
Other track material	107.03	143.28	47.54	46.90	58.99	46.18	65.92
Roadway and track	551.14	513.13	384.79	375.38	588.98	488.73	477.51
Bridges, trestles, etc	88.43	24.56	87.28	93.20	83.94	83.82	84.69
Fences, etc	39.50	14.98	15.43	11.19	10.02	10.40	18.36
Buildings, etc	81.47	264.87	44.68	45.44	44.64	81.91	72.69
Miscellaneous	74.24	11.04	65.98	13.43	[1] 124.51	[1] 3.02	17.92
Total	1,316.06	1,293.87	1,011.94	913.81	1,095.98	1,127.30	1,119.39

[1] Indicates red ink figures on the exhibit.

SECTION B.—FREIGHT TRAFFIC DENSITY FOR PRINCIPAL LINES OF RAILROAD IN LOUISIANA, TEXAS, AND ARKANSAS FOR YEAR ENDED JUNE 30, 1914.[1]

State.	Average single-track mileage operated.	Tons carried.	Average haul (miles).	Ton-miles per mile of line.
Louisiana	355,392	17,949,801	110.69	559,068
Arkansas	266,191	14,207,727	156.69	836,295
Texas	751,382	25,875,541	167.62	577,222

[1] Includes the following carriers: Atchison, Topeka & Santa Fe; Rock Island; Kansas City Southern Louisiana & Arkansas; Iron Mountain; New Orleans, Texas & Mexico; Southern Pacific; Texas & Pacific Vicksburg, Shreveport & Pacific; Louisiana Railway & Navigation Co.

SECTION C.—ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY. AVERAGE MILES OPERATED AND AVERAGE FREIGHT AND PASSENGER TRAFFIC DENSITY FOR THE FISCAL YEARS 1913 TO 1916.

	Miles.	Operating expenses per mile.	Revenue tons 1 mile per mile of road.	Revenue passengers 1 mile per mile of road.
Arkansas	598	$5,062	485,784	77,790
Missouri	[1] 1,717	7,066	698,248	113,656
Oklahoma	1,507	5,417	486,556	92,184
Entire line	4,746	6,234	646,301	103,135

[1] All in so-called "B" territory.

Outline of certain evidence bearing upon the similarity of transportation conditions, etc.—Continued.

SECTION D.—ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY. AVERAGE OF ALL OPERATING EXPENSES PER MILE OF LINE FOR FISCAL YEARS 1913, 1914, 1915, AND 1916.

	Miles.	Total operating expenses.	Operating expenses per mile.
Arkansas	1,753	$11,687,831	$6,665
Missouri	625	4,433,207	7,084
Oklahoma	161	1,228,529	7,630
Illinois	217	2,325,000	10,879
Louisiana	576	2,421,980	4,214
Entire line	3,368	22,078,573	6,553

SECTION E.—CHICAGO, ROCK ISLAND & PACIFIC RAILWAY. ALL OPERATING EXPENSES PER MILE OF LINE AND PER TRAIN-MILE.

	All operating expenses per mile of road.	Train-miles per mile of road.	Operating expenses per train-mile.
Fiscal year 1914:			
Entire line	$6,325.11	4.304	$1.47
Arkansas	6,212.88	3.619	1.72
Missouri	6,599.78	4.627	1.43
Oklahoma	4,454.27	3.168	1.41
Kansas	6,958.38	5.024	1.39
Fiscal year 1915:			
Entire line	6,531.80	4.298	1.52
Arkansas	6,144.66	3.494	1.76
Missouri	6,892.43	4.480	1.54
Oklahoma	4,761.16	3.231	1.47
Kansas	7,639.62	5.249	1.46
Fiscal year 1916:			
Entire line	6,797.77	4.395	1.55
Arkansas	5,827.79	3.295	1.77
Missouri	7,795.67	4.873	1.60
Oklahoma	4,895.95	3.170	1.54
Kansas	7,968.60	5.353	1.49

SECTION F.—ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY. SHOWING THAT OPERATING REVENUES AND EXPENSES FOR THE STATE OF ARKANSAS BEAR APPROXIMATELY THE SAME RELATIONSHIP TO THE TOTAL OPERATING REVENUES AND EXPENSES AS THE ARKANSAS MILEAGE BEARS TO THE TOTAL MILEAGE. FISCAL YEAR 1914.

	Arkansas.	Entire line.	Percentage.
Number of miles operated	1,761.90	3,364.95	52
Total operating revenues	$17,729,615.07	$33,171,859.65	53
Total operating expenses	$11,399,239.63	$21,346,290.26	53

SECTION G.—ST. LOUIS SOUTHWESTERN RAILWAY COMPANY. COST OF MAINTENANCE AND DENSITY OF TRAFFIC BY STATES. YEAR ENDED JUNE 30, 1917.

	Arkansas.	Missouri.	Illinois.	Louisiana.
Average track mileage operated	583.12	164.76	156.74	38.71
Maintenance of way and structures	$631,656.42	$152,313.41	$112,666.43	$36,453.89
Cost per mile	$1,083.23	$924.46	$718.81	$941.72
Tons of revenue freight one mile	541,499,128	138,906,690	165,662,850	14,965,832
Density of traffic	928,624	843,085	1,056,928	386,614

Outline of certain evidence bearing upon the similarity of transportation conditions, etc.—Continued.

SECTION H. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY. AVERAGE AMOUNTS EXPENDED FOR MAINTENANCE OF WAY AND STRUCTURES PER MILE OF ROAD, 1916 AND 1917.

	1916	1917
Kansas	$1,392	$1,[illegible]
Arkansas	1,573	[illegible]
Oklahoma	1,1[illegible]	[illegible]
Missouri	1,3[illegible]	[illegible]
Louisiana	[illegible]	[illegible]

SECTION I.—MISSOURI PACIFIC RAILWAY—STATEMENT INDICATING THAT EXCESSIVE RAINFALL IN ARKANSAS AND LOUISIANA RESULTS IN RELATIVELY HIGH COSTS FOR LABOR EMPLOYED IN ROADWAY AND TRACK MAINTENANCE.

	Average precipitation in inches.[1]	Cost per mile of labor in roadway and track maintenance
Colorado	1[illegible].32	[illegible]
Kansas	2[illegible].72	[illegible]
Missouri	33.21	[illegible]
Louisiana	5[illegible].2[illegible]	[illegible]
Arkansas	49.66	[illegible]

[1] 1905 to 1916, inclusive.

SECTION J.—MISSOURI PACIFIC SYSTEM—MISCELLANEOUS STATISTICAL COMPARISONS, AVERAGE FOR FISCAL YEARS 1912 AND 1913

	Kansas.	Missouri	Arkansas	Louisiana
Miles operated	2,384.21	1,627.59	1,736.0[illegible]	[illegible]
Freight density	494,327	772,273	[illegible]84,21[illegible]	[illegible]
Passenger density	47,922	97,995	85,234	[illegible]
Roadway and track maintenance per mile	$606.51	$[illegible]82.16	$1,092.0[illegible]	$[illegible]
Roadway and track maintenance per revenue-train mile (cents)	19.60	20.3[illegible]	26.9[illegible]	[illegible]

No. 10413.

VIRGINIA-CAROLINA CHEMICAL COMPANY
v.
WALKER D. HINES, DIRECTOR GENERAL OF RAILROADS.

Submitted June 20, 1919. Decided December 10, 1919.

Through rates on fertilizer, in carloads, from Mobile, Ala., to designated stations on the Southern Pacific lines in Louisiana found unreasonable and unduly prejudicial. Relationship of rates prescribed for the future and reparation awarded.

H. W. B. Glover for complainant.

A. P. Humburg, *Alex M. Bull*, and *Victor Leovy* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

EASTMAN, *Commissioner:*

A proposed report prepared by the examiner who heard the case was served upon the parties and exceptions thereto were filed by complainant.

Complainant is a corporation engaged in the manufacture and shipment of fertilizer, with general offices at Richmond, Va. Its complaint, filed April 12, 1919, attacks as unreasonable and unduly prejudicial in favor of New Orleans, La., in violation of the act to regulate commerce and the federal control act, defendant's rates applicable to fertilizer, in carloads, from Mobile, Ala., to stations on the Southern Pacific lines in Louisiana, as follows: Bell City, Edgerly, Gueydan, Haire, Hayes, Hipple, Holmwood, Iota, Iowa, Jennings, Kaplan, Lacassine, Lake Arthur, Midland, Morse, Niblett, Roanoke, Rossignol, Sulphur, Thornwell, Vinton, and Welsh. The prayer is for reparation and the establishment of rates for the future from Mobile, bearing proper relation to the rates from New Orleans. Except as otherwise indicated, rates herein are stated in dollars and cents per net ton.

In February and March, 1918, complainant shipped over the Louisville & Nashville Railroad from Mobile to New Orleans, thence over the Southern Pacific lines to the stations named, 52 carloads of fertilizer, aggregating in weight 1,642.5 net tons, on which it prepaid freight charges at a joint commodity rate of $3.75. This rate, which

was constructed on the basis of a proportional commodity rate of $1 to New Orleans, and a commodity rate of $2.75 beyond, had been in effect prior to April 1, 1915, to all of the destination points. On that date increased joint commodity rates ranging from $4.60 to $5.40 were established. On October 22, 1915, the joint commodity rates were canceled, leaving as the legally applicable rates those made in combination on New Orleans, using the proportional rate of $1 to New Orleans and proportional or basing class E rates, ranging from 18 cents per 100 pounds or $3.60 per ton, to 22 cents per 100 pounds or $4.40 per ton. The change on October 22, 1915, resulted in no increases. The burden of justifying the increased rates is upon the carriers, now under federal control, and represented here by the defendant. All of the rates were subsequently increased 25 per cent, pursuant to defendant's General Order No. 28, effective June 25, 1918, but complainant does not question the propriety of such increases.

Upon discovery that incorrect charges had been paid, complainant called upon the Southern Pacific for undercharge bills, and such bills covering certain of the shipments were presented to and paid by complainant. It is now sought to recover the amounts paid in excess of $3.75 and to have collection of outstanding undercharges waived.

The points of destination are in a rice-producing territory and the fertilizer was for the use of rice growers. Lines other than the Southern Pacific continued in effect the joint rate of $3.75 from Mobile to points in this territory. Consequently to common points, such as Westlake, Lake Charles, Rayne, and Lafayette, the Southern Pacific lines also continued that rate and in connection with the increased rates to destinations intermediate to Lake Charles, viz, Jennings, Roanoke, Welsh, Midland, Iowa, and Lacassine, published a note in accordance with rule 77 of Tariff Circular 18–A. Upon being informed that shipments were moving to certain of the intermediate points, viz, Jennings, Roanoke, Welsh, and Midland, the Southern Pacific lines on March 6, 1918, established on interstate traffic from New Orleans to those destinations a commodity rate of $2.75, thus restoring the through rate of $3.75. The record indicates that they did not likewise reduce the rates to Iowa and Lacassine because they overlooked or were not informed that shipments were moving to those two destinations.

The commodity rate of $2.75 beyond New Orleans was the state rate maintained under order of the Railroad Commission of Louisiana. In 1915 the Southern Pacific lines canceled its interstate application but continued it on intrastate traffic. The testimony is that the action so taken and the aforesaid increases in the joint rates of

$3.75 were part of a general revision of Louisiana state and interstate rates undertaken in connection with the so-called *Natchez-Louisiana Case*, 52 I. C. C., 105, the Southern Pacific conceiving the state rates in general to be too low and discriminatory as compared with the interstate rates from New Orleans.

Complainant shows that it is in competition for this traffic with shippers at New Orleans and observes that in so far as concerns the service at and movement from New Orleans the Southern Pacific obviously was and is at less expense on through cars from Mobile than on cars loaded at New Orleans.

Defendant shows that the class E basing rates applicable beyond New Orleans were in excess of the contemporaneously effective intrastate class E rates, as illustrated by the following selections from an exhibit of record:

From New Orleans to—	Distance.	Class E state rate, per 100 pounds.	Class E interstate rate, per 100 pounds.
	Miles.	*Cents.*	*Cents.*
Gueydan	206.9	18	20
Holmwood	245.8	18	21
Kaplan	221.8	18	20
Morse	199.8	18	20
Thornwell	262.4	18	22

Defendant further shows that in the *Natchez-Louisiana Case*, *supra*, we prescribed as reasonable certain class rates for application between New Orleans and other lower Mississippi River crossings and points in Louisiana west of the Mississippi River, and that those prescribed on class E for the distances here involved were somewhat higher than the former and present class E rates, both state and interstate. Defendant relies upon this showing and upon a companion exhibit designed to show the low level of the state commodity rates. The companion exhibit, however, is without merit. In constructing it defendant took as the initial rate that of 5 cents per 100 pounds prescribed in *Virginia-Carolina Chemical Co.* v. *St. L. & S. F. R. R. Co.*, 18 I. C. C., 5, for application on fertilizer from Memphis, Tenn., to points in Arkansas for distances of 5 miles and under; figured the percentage that rate bears to the class E rate prescribed for like distances in the *Natchez-Louisiana Case*, *supra;* and applied such percentage relationship to the class E rates prescribed for the distances corresponding to those between New Orleans and the destinations in question. The resulting rates are substantially higher than the class E basing rates in issue. The exhibit presupposes that the initial rate of 5 cents alone is a reasonable maximum rate and that the rates prescribed on fertilizer for other distances in the case referred to are

too low. If, for example, the rate prescribed for 150 miles is used as the initial rate in the calculation, the resulting rates are very much lower than the class E basing rates.

The effect of defendant's evidence is to show that the class E basing rates are not unreasonable as class rates. It does not show that they are reasonable as applied to fertilizer.

We have had before us in a number of cases rates on fertilizer between points in southeastern and southwestern territories and in each instance they were commodity rates. The rates prescribed by us in previous cases for comparable distances are on a substantially lower basis than the rates here in issue and compare favorably with the previous rates of $3.75 and $2.75 from Mobile and New Orleans, respectively. The distance from New Orleans to Mobile is 179 miles. From New Orleans to the destinations involved the distances range from 187.6 miles to 269.7 miles, with an average of 231.8. The following are typical of the rates prescribed in previous cases:

From—	To—	Distance.	Rate per ton.	Prescribed in—
		Miles.	*Cents.*	
Shreveport, La.	Pine Bluff, Ark.	184.2	210	16 I. C. C., 49.
Memphis, Tenn.	Points in Arkansas.	200 and over 150	220	18 I. C. C., 5.
		250 and over 200	240	
		300 and over 250	260	
		400 and over 350	300	
Baltimore, Md.	Kiptopeke, Va.	272	210	30 I. C. C., 29.
Norfolk, Va.	Points in North Carolina.	190 and over 180	235	50 I. C. C., 34, decided Apr. 29, 1918.
		240 and over 230	260	
		270 and over 260	275	
		420 and over 400	350	

Defendant has not justified the rates assailed. We accordingly find that during the period when the shipments moved these rates were unreasonable to the extent that they exceeded $3.75 per ton and unduly prejudicial to complainant and unduly preferential of shippers at New Orleans to the extent that they exceeded the contemporaneous intrastate rates from New Orleans to the same destinations by more than the contemporaneous established rate from Mobile to New Orleans. We further find that the present rates are and for the future will be unduly prejudicial to complainant and unduly preferential of shippers at New Orleans to the extent that they exceed the contemporaneous intrastate rates from New Orleans to the same destinations by more than the contemporaneous established rate from Mobile to New Orleans. We further find that complainant made shipments as described, and on some of them paid and bore charges at the rates herein found to have been unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges at the rate herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of

reparation can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No order for the future is necessary with respect to the rates to Jennings, Roanoke, Welsh, and Midland. An appropriate order will be entered with respect to the rates to the other destinations.

No. 10287.

GLOBE ELEVATOR COMPANY

v.

DIRECTOR GENERAL, DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, ET AL.

Submitted June 16, 1919. Decided December 10, 1919.

The practice of the Delaware, Lackawanna & Western Railroad and Lehigh Valley Railroad, and of the Buffalo, Rochester & Pittsburgh Railroad prior to March 5, 1918, of refusing to absorb the switching charge of the Erie Railroad at Buffalo, N. Y., on shipments of transit grain or grain products to the same extent that they absorb or absorbed the switching charges of the New York Central Railroad or Buffalo Creek Railroad found to be and to have been unduly prejudicial to complainant, but not to have been the cause of damage to complainant on shipments of grain products. Reparation awarded on shipments of grain to points on defendants' rails which could not have been reached, at complainant's option and without disregard of routing instructions given by or delivery requirements of its consignees, by other routes which would have avoided the switching charge.

James O. Moore for complainant.

Douglass Swift for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

EASTMAN, *Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner before whom the testimony was taken. Exceptions were filed and the parties were heard in oral argument.

The Globe Elevator Company, complainant herein, is engaged at Buffalo, N. Y., in the purchase and sale of grain and in the manufacture of feed. Its mill and elevator are located on the rails of the Erie Railroad. By complaint, filed July 1, 1918, as amended, it alleges that the tariffs of the Delaware, Lackawanna & Western Railroad and Lehigh Valley Railroad governing the absorption of outbound switching charges on grain and grain products in transit at Buffalo are unreasonable and subject it to undue prejudice and disadvantage, in that they do not provide for the absorption of the charges assessed by the Erie Railroad on such commodities moving from complainant's mill and elevator, while authorizing the absorption of the switching charges of the New York Central Railroad and Buffalo Creek Railroad on shipments from mills and elevators on the rails of those carriers. Similar allegations of unreasonableness and undue prejudice are made respecting the absorption tariffs of the Buffalo, Rochester & Pittsburgh Railroad in effect prior to March 5, 1918. Reparation is asked.

Substantially all of the grain received by complainant moves into Buffalo over the rails of the Erie, New York Central, Michigan Central, New York, Chicago & St. Louis, Pere Marquette, and Wabash railroads, is accorded the usual transit privileges applicable to grain, and is finally forwarded to eastern destinations under through billing from points of origin as grain or grain products. The inbound switching charges at Buffalo are absorbed by the western lines. Complainant's principal competitors are the Buffalo Cereal Company and the Eastern Grain Company, which are located on the tracks of the New York Central, and the Churchill Grain & Seed Company, served by the Buffalo Creek Railroad. Competition with the Buffalo Cereal Company is in the sale of grain products and feed, and to a lesser extent in grain, and with the Eastern Grain Company and the Churchill Grain & Seed Company in the sale of grain only.

The charge of the Erie Railroad for switching carload shipments of grain and grain products from complainant's mill and elevator to connections with the Delaware, Lackawanna & Western, Lehigh Valley, and Buffalo, Rochester & Pittsburgh, hereinafter referred to as defendants, is $3.50 per car. The Lehigh Valley and the Delaware, Lackawanna & Western, hereinafter called the Lackawanna, do not absorb any part of this charge and the Buffalo, Rochester & Pittsburgh did not until March 5, 1918. By tariff effective on that date the latter carrier provided for the absorption of the switching charges of all connecting lines in Buffalo on transit grain and grain products to the extent of $2.60 per car. Throughout the period covered by the complaint the New York Central has absorbed the full amount of the Erie's switching charge.

For the movement from the Buffalo Cereal Company and the Eastern Grain Company to connections with defendants' rails the New York Central publishes a switching charge of $2.60 per car on all-rail transit grain moving under through rates from points of origin to destinations east of Buffalo, and on grain products from the Buffalo Cereal Company $3.50 per car, except that when the grain has moved into Buffalo over the New York Central lines west of Buffalo no switching charge is assessed on the outbound grain products. Until July 15, 1917, the charge on grain was $2.10 per car. The switching charge of the Buffalo Creek Railroad on grain and grain products moving from the elevator of the Churchill Grain & Seed Company to defendants' rails has been $2.60 per car since May 21, 1917. Prior thereto it was $2.10.

By a tariff effective January 1, 1916, the Lackawanna provided for the absorption of the switching charges of the New York Central to the amount of $2.10 per car on all-rail transit grain from the Buffalo Cereal Company and Eastern Grain Company, and on grain products from the Buffalo Cereal Company when the inbound movement was over the New York, Chicago & St. Louis, Michigan Central, Grand Trunk, Pere Marquette, or Wabash railroads. Since July 15, 1917, the amount of the absorption has been $2.60 per car. The practice of the Lackawanna has also been to absorb the charges of the Buffalo Creek on grain and grain products forwarded by the Churchill Grain & Seed Company. The Lehigh Valley, since February 15, 1916, has published rules for the absorption of switching charges similar to those of the Lackawanna, but provided for the increase to $2.60 per car on May 25, 1917. Inasmuch as no charge is assessed by the New York Central on shipments of grain products from the Buffalo Cereal Company when that carrier receives the inbound line haul the tariffs of the Lackawanna and Lehigh Valley do not provide for an absorption on grain products moving under through New York Central billing. The Buffalo, Rochester & Pittsburgh has continuously provided in its tariffs for the absorption of the switching charges of the Buffalo Creek Railroad on transit grain and grain products, and since March 5, 1918, has made similar provision on traffic from other lines, including the Erie.

It appears from the record, and defendants admit, that the circumstances under which they absorb the switching charges of the New York Central and the Buffalo Creek on grain or grain products moving from the Buffalo Cereal Company, Eastern Grain Company, and the Churchhill Grain & Seed Company do not differ from those under which they decline, or in the case of the Buffalo, Rochester & Pittsburgh formerly declined, to absorb the charges of the Erie from complainant's mill and elevator. The Lackawanna and Lehigh Valley have declared their intention of providing for

the absorption in the amount of $2.60 per car of the Erie's charge on such commodities moving under through billing from western lines, and, as stated, the Buffalo, Rochester & Pittsburgh has already made such provision. The principal issue here, therefore, is whether complainant has been damaged by reason of the failure of defendants to absorb the switching charges of the Erie from its mill and elevator to the same extent that they absorb and absorbed those of the carriers serving its competitors.

The record shows that complainant and the Buffalo Cereal Company manufacture substantially the same kinds of feed and are in active competition in the sale of their products at points east of Buffalo on the rails of the Erie, New York Central, Lackawanna, Lehigh Valley, and Buffalo, Rochester & Pittsburgh, and their connections. The grain is drawn from the same general territory, moves over the same roads into Buffalo, and is subject to the same transit rules. The selling prices of the different grades of feed are based on the closing market price of the grain plus the cost of manufacture and the freight rate to destination, and are made up daily by the Buffalo dealers for distribution at all points throughout the east. In meeting the prices quoted by the Buffalo Cereal Company for deliveries at points on or reached by way of the Lackawanna and Lehigh Valley complainant has assumed the switching charge of the Erie, and until March 5, 1918, was under the same disadvantage when forwarding shipments over the Buffalo, Rochester & Pittsburgh. It is on a parity with its competitor in making deliveries at points served by the Erie or New York Central.

As hereinbefore stated, competition in the sale of grain is principally with the Eastern Grain Company and the Churchill Grain & Seed Company, and what has been said regarding complainant's disadvantage with respect to grain products applies also to grain. Under defendants' tariffs both of those companies have been able to make shipments of grain to points on the Lackawanna and Lehigh Valley without charge for switching, and one of them enjoyed a like advantage on shipments to points on the Buffalo, Rochester & Pittsburgh until the tariff of that carrier was made applicable to shipments received from all connecting lines.

With certain exceptions which will hereinafter be considered. defendants do not question that complainant has suffered damage on the shipments of grain which are in issue or that it is entitled to reparation therefor. In the case of the shipments of grain products, however, the carriers earnestly contend that the prejudicial absorption tariffs were not the cause of whatever damage may have been suffered, and that no reparation may lawfully be awarded. As has been stated, when it has received the inbound haul no switch-

ing charge is assessed by the New York Central on shipments of transit grain products moved from the Buffalo Cereal Company's elevator to the Lackawanna or Lehigh Valley tracks, nor do the tariffs of the defendants provide for the absorption of a switching charge in such cases. By using New York Central through billing for outbound shipments over the Lackawanna and Lehigh Valley, the Buffalo Cereal Company has thus been able to avoid all charges for switching, and the evidence shows that it did this in the great majority of cases during the reparation period. Out of the total of 1,067 shipments which moved over the Lehigh Valley from June 28, 1916, to April 30, 1919, only 67 were forwarded under the through billing of western lines other than New York Central, and only 26 out of the total of 720 shipments which moved over the Lackawanna during approximately the same period.

From these facts the conclusion is drawn that complainant's disadvantage was created by circumstances wholly disconnected from the tariffs and practices of the defendants, and for which they were in no way responsible. The few exceptional shipments, it is alleged, could not alone have operated to fix the selling price in competitive markets. Defendants also call attention to the fact that the Buffalo, Rochester & Pittsburgh, prior to March 5, 1918, did not provide in its tariffs for the absorption of any switching charges on the Buffalo Cereal Company's shipments of grain products, whatever the through billing might be. Yet that company, by using New York Central through billing, could and did avoid a switching charge in shipping its products to points on the Buffalo, Rochester & Pittsburgh, while complainant was under the same handicap as regards the Erie switching charge and suffered the same damage on its shipments of feed over the Buffalo, Rochester & Pittsburgh, in the absence of any tariff discrimination, as it suffered on similar shipments over the Lackawanna and Lehigh Valley, in the presence of such discrimination.

Complainant maintains that while its damage would not have been wholly removed, it would have been materially lessened if the tariffs of the Lackawanna and the Lehigh Valley during the reparation period had made the same provision for the absorption of charges on grain products switched from mills and elevators on the Erie as from those on the New York Central. It argues that defendants' failure, admittedly unlawful, to accord like treatment in both cases was, therefore, the cause of the greater portion of the damage which was suffered. When switching charges were absorbed in certain cases, the right was created, complainant contends, to have similar charges

absorbed in all other cases where circumstances were not dissimilar, and from the denial of this right its disadvantage and damage sprang.

We think that the defendants are justified in their view of this matter. For the most part complainant's competitor, the Buffalo Cereal Company, did not use the absorption tariffs during the reparation period but accomplished a similar result by the use of New York Central through billing. Complainant's damage would have been suffered if the prejudicial tariffs had never been made effective, and the prejudice can not be regarded as its cause. There were a few exceptional cases, it is true, where the situation was otherwise, but no definite part of complainant's damage is related by the evidence to these particular shipments. In the case of grain products, we therefore find that it has not been shown that the prejudicial tariffs in question were the cause of damage to complainant, and that no award of reparation may properly be made.

As has been stated, defendants admit that complainant is entitled to reparation on the shipments of grain in question, subject to certain exceptions which we shall now consider. At the hearing complainant submitted a partial list of representative points to which shipments had been made. Many of the points named are common points or points beyond defendants' lines which could have been as conveniently reached over the Erie or New York Central without charge for switching at Buffalo. It was explained in a general way that in such instances the routing was directed by consignees, who, by reason of their location, or for certain advantages of billing, preferred to have their shipments move over the particular route which was designated. It was further stated that in practically all cases where routing instructions were not given, shipments were forwarded over the Erie or New York Central.

Complainant insists that it was necessary to follow the instructions given by its customers, as otherwise their orders would have been placed with other dealers in Buffalo who had equal advantages over all routes. Defendants, on the other hand, argue that even if complainant was required by its consignee to route a shipment over their rails when it might have been forwarded over the Erie or New York Central, it would not be entitled to reparation if the consignee was not justified by the facts in requiring such routing. It is urged that the shipper and consignee must be treated as a unit, that the relationship established by the contract of carriage is between the railroad company on the one hand and the shipper and consignee on the other, and that if the latter parties unnecessarily make a shipment over a route which carries a higher rate than some other available route, they are responsible for the damages which are thereby incurred.

In our judgment, complainant could not well be expected to question the reasons for the instructions which were given by its customers; no relationship existed between them which would have made such a course natural or appropriate; and the prejudicial tariffs of defendants were the proximate cause of the damage to complainant which resulted when the instructions were followed. The evidence of complainant, however, does not establish the fact that its damage on any particular shipment made to a competitive point or to a point beyond the rails of the defendants was caused by the prejudicial tariffs. Clearly, it can not claim that these tariffs were the cause if, without specific instructions to that effect, or without the necessity for such routing because of consignee's location, it routed a car over one of the defendant carriers when the New York Central or Erie offered the same service at a lower cost. Any additional expense to which complainant may have been subjected by failing to take advantage of the service of those carriers, when not prevented from so doing by the requirements of its customers, can not be attributed to defendants' absorption tariffs.

It also seems that certain shipments of grain were made to points on the Lehigh Valley or its connections which might have been reached under joint rates applying via the Erie and Lehigh Valley through Waverly as the junction point, without assessment of any switching charge at Buffalo; and defendants claim that complainant is not entitled to reparation in such cases. In reply, complainant states that this contention might have merit if all its grain from the west came over the Erie, but that most of its grain arrives inbound at Buffalo over the Nickel Plate, Pere Marquette, Wabash, Michigan Central, and New York Central. There was no through route and joint rate via the Erie and Lehigh Valley through Waverly for transit grain which moved into Buffalo over any of the other western roads. Unless, therefore, complainant had Erie billing to apply on outbound shipments to the Lehigh Valley, it could not obtain the advantage of the through route and joint rates via Waverly. This use of Erie billing, complainant states, can rarely be accomplished, because of the small number of shipments which it receives over the Erie from the west. Here again the evidence is not sufficient to determine whether or not in the specific cases in question the through route via Waverly might have been used to avoid the switching charge.

We find upon the record that the practice of the Lackawanna and Lehigh Valley of refusing to absorb the switching charges of the Erie Railroad on transit grain and grain products to the same extent that they absorb those of the New York Central and Buffalo Creek railroads on the same commodities has been and is unduly prejudi-

cial to complainant, and that the former practice of the Buffalo, Rochester & Pittsburgh in this respect was likewise unduly prejudicial to complainant. An appropriate order will be entered requiring defendants Lackawanna and Lehigh Valley and Walker D. Hines, Director General of Railroads, to remove this prejudice. We further find that complainant has been damaged and is entitled to reparation on each car of transit grain shipped to local or common points on defendants' rails which could not have been reached, at complainant's option and without disregard of routing instructions given by its consignees or of the necessity for a particular delivery because of consignee's location, by other routes which would have avoided the switching charge, in an amount equivalent to that which defendants contemporaneously absorbed on like shipments to the same points from mills and elevators in Buffalo on the New York Central and Buffalo Creek railroads. The facts of record, however, are not sufficient to enable us to segregate the particular shipments of grain upon which complainant is thus entitled to reparation. If complainant can come to an agreement with defendants as to the amount of reparation to which it is entitled under our findings, it should prepare a statement in accordance with rule V of the Rules of Practice and submit it to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. If such agreement can not be reached, complainant may ask for further hearing in order that it may supply this deficiency in the evidence.

No. 9802.

WACCAMAW LUMBER COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted July 16, 1919. Decided November 24, 1919.

Rates on lumber, in carloads, from Bolton, N. C., to Norfolk and Pinners Point, Va., and points north thereof found to have been unreasonable. Reparation awarded.

Robert D. Burbank for complainant.
Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of lumber at Bolton, N. C. By complaint filed July 14, 1917, it alleges that the defendants' rates on lumber, in carloads, in effect prior to May 22, 1915, from Bolton to Norfolk and Pinners Point, Va., and to various points beyond in trunk line and New England territories were unreasonable and unjustly discriminatory to the extent that the local or proportional rate to Norfolk or Pinners Point exceeded the combination of rates to and from Drum Hill, N. C. Reparation is asked on numerous shipments which moved subsequent to May 31, 1914. The claim was presented to the Commission informally June 20, 1916. Shipments on which the freight charges were paid two years or more prior to that date are barred by the statute of limitations. The Director General of Railroads was made a party defendant by supplemental complaint filed prior to the hearing. Rates are stated in cents per 100 pounds.

Apparently some of the shipments listed in the complaint did not move through Drum Hill, but the claim for reparation is confined to shipments which moved over the defendant carriers' lines to or through Norfolk or Pinners Point by way of Drum Hill. Through rates on lumber from Carolina points to points in trunk line and New England territories are and for many years past have been constructed by adding to the proportional rates from the Carolina points to the Virginia gateways, including Norfolk and Pinners Point, the specifics of the lines operating north of the gateways. At the time

when the shipments moved the proportional rate as well as the local rate from Bolton to Norfolk and Pinners Point was 11 cents, and from Drum Hill to Norfolk and Pinners Point 3.25 cents. Contemporaneously the Atlantic Coast Line Railroad published a local distance rate of $17.30 per car of 24,000 pounds, excess in proportion, equivalent to a rate of 7.208 cents, on lumber, in carloads, from Bolton to Drum Hill, which, in the absence of through rates, could have been used as a factor in the construction of through rates to the destinations in question. On May 22, 1915, the minimum was reduced to 20,000 pounds, which was equivalent to an increase to 8.65 cents in the rate to Drum Hill. The aggregate of the rates from Bolton to Drum Hill and from Drum Hill to Norfolk or Pinners Point was, therefore, prior to May 22, 1915, 10.458 cents, or 0.542 cent less than the through local or proportional rate, and thereafter 11.9 cents, or 0.9 cent in excess of such rate.

Defendants express willingness to make reparation on the basis of the aggregates of the intermediate rates to and from Drum Hill.

We find that the rates applicable to the above-described shipments via Drum Hill which moved prior to May 22, 1915, were unreasonable to the extent that the local or proportional rate to Norfolk or Pinners Point exceeded the aggregate of the intermediate rates contemporaneously in effect over the route of movement to those points; that complainant made the said shipments and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest, on all of the said shipments as to which its claims are not barred by the statute of limitations. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Inasmuch as the rate from Bolton to Norfolk and Pinners Point has been lower since May 22, 1915, than the combination on Drum Hill, there is no basis for an award of reparation on shipments moving subsequent to that date.

No. 10321.[1]

PORTLAND CATTLE LOAN COMPANY

v.

DIRECTOR GENERAL, OREGON SHORT LINE RAILROAD COMPANY, ET AL.

Submitted June 11, 1919. Decided November 24, 1919.

Rates on cattle in carloads from Hereford and Abernathy, Tex., to Pocatello, Idaho, and Butte and Monida, Mont., found to have been unreasonable. Reparation awarded.

James C. Wilson and *Geo. B. Guthrie* for complainants.

George H. Smith, *A. C. Spencer*, and *John F. Reilly*, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The complainants are corporations engaged in the cattle loan and feed business at North Portland, Oreg. By complaints filed October 29, 1918, it is alleged that the rates charged for the transportation, in August and September, 1912, of numerous carloads of cattle from Hereford and Abernathy, Tex., to Pocatello, Idaho, and Butte and Monida, Mont., were unreasonable to the extent that they exceeded rates subsequently established. Reparation is sought. Complainants state that the rates in effect since May 20, 1913, have been satisfactory. Rates are stated in amounts per car.

The points of origin are in the panhandle of Texas; Hereford is 47 miles southwest of Amarillo, Tex., and 57 miles northeast of Clovis, N. Mex.; and Abernathy is 105 miles south of Amarillo. The shipments moved Pecos & Northern Texas Railway (now Pan Handle & Santa Fe Railway) to Amarillo; Fort Worth & Denver City Railway to Texline, Tex.; Colorado & Southern Railway to Denver, Colo.; Union Pacific Railroad to Granger, Wyo.; and Oregon Short Line Railroad to destinations, averaging about 1,312 miles. A branch of the latter railroad runs north from Pocatello through Idaho Falls, Monida, and Dillon to Butte. At the time of movement the tariffs provided that Hereford should take the Ama-

[1] This report also embraces No. 10321 (Sub-No. 1), Portland Feeder Company *v.* Same. 55 I. C. C.

rillo basis of rates and Abernathy an arbitrary of $8.80 per car over that basis. On May 20, 1913, the basis of rates just described was also made applicable to the destinations here. Reparation is asked to the basis of the rates subsequently established. Insufficient charges were assessed on all of the shipments at the time of delivery; and in January, 1915, defendants erroneously refunded $615.70 on certain shipments from Hereford, which refund was based on the Amarillo rate. The carriers later obtained judgments for the undercharges on all of the shipments, which were sustained on writs of error. *Portland Cattle Loan Co.* v. *O. S. L. R. Co.*, 251 Fed., 33, and *Portland Feeder Co.* v. *Same*, 251 Fed., 36. Complainants paid the respective judgments, with interest and costs, in June or July, 1918, and within the two-year statutory period thereafter filed this complaint. The following statement and notes show details of the shipments, rates applied and subsequently established, rates from Amarillo, and payment of charges:

	Portland Cattle Loan Company.			Portland Feeder Company.		
	Hereford to Amarillo.[1]	Hereford to Pocatello.	Hereford to Butte.	Hereford to Monida.	Abernathy to Pocatello.	Abernathy to American Falls.[2]
Distance, miles	47	1,158	1,421	1,289	1,215	1,241
Number carloads in each shipment	1	27	16	36	21	11
Rate applied per car [3]	$26.40	$142.90	$171.20	$144.90	$156.10	$170.10
Rate subsequently established	.....	116.50	144.80	118.50	125.30	139.30
Charges paid on delivery in 1912	20.00	3,685.50	2,636.80	4,986.00	2,866.50	1,655.50
Erroneous refund in 1915	$615.70					
Judgments paid in 1918	794.90		102.40	230.40	411.60	215.60
Interest on judgments	230.34			311.61		
Costs of suits	172.10			40.00		

[1] No reparation is asked on this shipment.
[2] The rate applied beyond Pocatello is not attacked.
[3] The through rates applied were based on combinations of the following rates: Hereford and Abernathy to Amarillo, $26.40 and $39.60 per car, respectively; Amarillo to Pocatello, Monida, and Dillon, $116.50, $118.50, and $125 per car, respectively, applicable to shipments of 10 cars or more; Dillon to Butte, $19.80 per car; Pocatello to American Falls, $14 per car.

As indicated above, a portion of the alleged unreasonable charges on each shipment was paid in 1912 and the remainder in 1918. Section 16 of the act to regulate commerce provides that all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after. In *Louisville Cement Co.* v. *Interstate Commerce Commission*, 246 U. S., 638, it was held that the cause of action accrues when the freight charges are paid. As full tariff rates must be collected, the charges can not be considered paid until fully paid. The transaction, being indivisible, was not closed, and the cause of action, therefore, did not accrue until full payment was made. *Accrual of Cause of Action*, 15 I. C. C., 201, 204.

Complainants cited rates ranging from $110 to $123.80 from the same points of origin to destinations in Montana east of the Rocky Mountains, applying via the route of movement to Denver, thence via Chicago, Burlington & Quincy Railroad to Billings, Mont., and Great Northern or Northern Pacific Railway beyond, 1,244 to 1,380 miles, which were also applicable via other routes through Nebraska; rates ranging from $95 to $124.80 from points of origin to destinations in North and South Dakota on the Chicago, Milwaukee & St. Paul Railway system, 1,241 to 1,544 miles, applicable via routes comparatively free from mountain hauls; rates of $112.75 and $117.75 from Clovis, N. Mex., to points in Montana, 1,530 to 1,630 miles, applicable via Denver; a rate of $125 from Hereford to Butte, 2,039 miles, by way of Kansas City, Mo., and Council Bluffs, Iowa; and a rate of $119.25 from Clovis, to Idaho Falls, 1,494 miles, applicable via the Atchison, Topeka & Santa Fe Railway to Denver, thence over the route the shipments moved beyond Denver.

Defendants cited rates ranging from $25.99 to $42, in local distance tariffs of the Great Northern, Northern Pacific, and Chicago, Milwaukee & St. Paul, for distances equal to those from points of origin to Amarillo; and from $141.50 to $242 from St. Paul, Minn., to points in Montana and Washington, from points in North and South Dakota and Montana to Seattle, Wash., from points in Idaho and Oregon to Omaha, Nebr., and from points in California to points in Nevada and Oregon, 658 miles to 1,423 miles. Substantial portions of these hauls are in mountainous country. The rates to Seattle and Omaha markets were applicable to the movement of fat cattle, for which we have frequently approved rates higher than on feeder cattle. Defendants state that there was no movement prior to these shipments; that subsequently the rates were voluntarily reduced to secure more cattle for the northern ranges because of the heavier production of beet-pulp feed by sugar factories; and that there has been some movement under these rates, but that it has been erratic. They contend that the car-mile earnings of from 11.25 to 13.71 cents on complainants' shipments were low as compared with earnings of the Oregon Short Line Railroad of 19.232 cents on cattle of all kinds; but the average haul per car on live stock on the Oregon Short Line was only 207.65 miles and the greater portion of the movements involved was over other lines.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates subsequently established; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged to the extent that the charges paid exceeded the charges that would have accrued on the

basis herein found reasonable; and that they are entitled to reparation on account of the unreasonable freight charges, with interest. As defendants contend, the costs taxed against the complainants in the federal courts were but incidental to the unsuccessful defense of that litigation, of which the assessment of unreasonable freight charges was not the proximate cause, and neither those costs nor the amounts of interest allowed and paid in those cases can be included in the award of reparation. But the allowance of interest was the equivalent of payment of the claims in suit when due and payable or of the judgments when entered, as the case may have been, and fixes the date or dates as of which interest on the unreasonable charges is allowable here.

The exact amounts of reparation due can not be determined on this record, and complainants should prepare statements showing the details of the respective shipments in accordance with rule V of the Rules of Practice, including the dates on which the earlier portions of the charges were paid and the dates from which interest was allowed on the remaining portions in suit, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. No order for the future is necessary.

No. 10467.

CHEVROLET MOTOR COMPANY OF TEXAS
v.
DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted June 25, 1919. Decided November 24, 1919.

Rate on gasoline engines, in carloads, from Flint, Mich., to Fort Worth, Tex., found to have been unreasonable to the extent that it exceeded the aggregate of the respective intermediate rates contemporaneously in effect to and from St. Louis, Mo., and other Mississippi River gateways. Reparation awarded.

Ed. P. Byars for complainant.
J. L. Lockett, jr., for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation manufacturing automobiles at Fort Worth, Tex., alleges by complaint filed February 15, 1919, that the rate charged on various carloads of gasoline engines and parts, shipped between February 14, 1917, and May 13, 1918, from Flint, Mich., to Fort Worth, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act to regulate commerce in that it exceeded the aggregate of intermediate rates from and to the same points, and exceeded rates contemporaneously applicable over the same routes from points of origin to which Flint is intermediate. Reparation is sought. Rates will be stated in amounts per 100 pounds.

Various automobile parts were included in the shipments and on these the respective less-than-carload rates were charged. Apparently the shipments also contained extra or additional engine parts on which the same rate was charged as on the engines. Such parts, if any, should have been charged the applicable less-than-carload rates, and were undercharged if the rate assessed was lower. The evidence is confined to the rate on gasoline engines, in carloads, and only that rate will be considered.

A few of the shipments originated on the Pere Marquette Railway and the remainder on the Grand Trunk Railway. They moved over defendants' lines by various routes, some through the St. Louis, Mo., gateway and others evidently through Rock Island, East Fort Madison, Quincy, and East Dubuque, Ill., respectively. The joint class A rate which then applied over these various routes was 95.9 cents, pursuant to the following provision of the governing western classification:

MACHINERY AND MACHINES:

	Class.
Engines:	
Internal Combustion (Alcohol, Gas, or Oil Burning), not otherwise indexed by name:	
* * * * * * *	
In packages named, straight or mixed C. L., min. wt. 24,000 lbs., subject to Rule 6–B and Note 3	A

NOTE.—Batteries forming a part of Internal Combustion Engines with which they are shipped may be included in mixed C. L. with such Internal Combustion Engines at Class A, min. wt. 24,000 lbs., subject to Rule 6–B.

For some time prior to the date of these shipments the joint class A rate from Flint to Fort Worth had been 95.9 cents. This rate also applied from Saginaw, Mich., and certain other points in that territory. The contemporaneous intermediate rates from Flint and Saginaw to and beyond the Mississippi River gateways were a fifth-class proportional of 18.9 cents, governed by the official classification, to the above-named gateways and a class A rate of 79 cents, governed by the western classification, beyond, aggregating 97.9 cents, or 2 cents in excess of the joint rate. In *Dallas Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 40 I. C. C., 619, decided June 27, 1916, we prescribed a maximum rate of 74 cents on machinery and machines from St. Louis to Fort Worth and certain other points in northeast Texas, and with respect to rates from points east of St. Louis we there said:

> This finding will not necessarily affect the rates from other points in defined territories except from points from which the local rates to Kansas City or St. Louis added to the rates herein prescribed from those cities to Texas points are lower than the present through rates from points of origin to Texas.

Effective October 15, 1916, a commodity rate of 74 cents was established from St. Louis to Fort Worth on "Machinery and Machines, rated in current Western Classification, Class A." Effective November 3, 1916, a joint commodity rate of 92.9 cents, the equivalent of the combination including the reduced factor west of St. Louis, was established from Saginaw and other points taking the same rates on the same articles, but no commodity rate was established from Flint, and the joint class A rate from the latter point thereupon exceeded

by 3 cents the aggregate of the rates to and from the Mississippi River.

Defendants now contend that the classification description of machinery and machines was never intended to cover automobile engines; that such engines are constructed especially for propelling motor vehicles, and are more "delicate and elaborate" than stationary gasoline engines; that they are in reality automobile parts and take class A rating as automobile parts, n. o. i. b. n.; and that the establishment of the commodity rate of 74 cents west of St. Louis resulted in no change in the then existing combination on this traffic. The classification provision upon which they rely follows:

VEHICLE PARTS:

Automobile Parts:	C. L.
* * * * * * *	
Automobile Parts, not otherwise indexed by name:	
* * * * * * *	
Iron or Steel:	
* * * * * * *	
Loose or in packages, C. L. min. wt. 30,000 pounds, subject to Rule 6-B.	A.

The class A rating on automobile parts was established by a supplement to the western classification which became effective April 20, 1917, and prior to that date a fourth-class rating applied in connection with this item. If defendants' contentions were well founded the joint rate from Flint then legally applicable was $1.162. But they are not. Complainant's engines were within the description of internal-combustion engines, "not otherwise indexed by name," in the general item of machinery and machines; and, considered under the item of automobile parts, were "otherwise indexed by name" within the terms of that item.

Defendants further contend that, regardless of the conclusion reached with respect to the rate through the St. Louis gateway, the joint rate over the routes through the other gateways did not exceed the aggregate of intermediate rates. But the factor from St. Louis to Fort Worth was not restricted to proportional application. The tariff publishing that rate contained the following provision:

The rates named in this Tariff from St. Louis, Mo., will also apply from points shown below as proportional rates on traffic originating at points east of the Indiana-Illinois State Line on which no through rates are published * * * East Dubuque, Ill., East Fort Madison, Ill., * * * Quincy, Ill., Rock Island, Ill. * * *

It thus appears that the 74-cent rate was not so restricted or limited as to make it inapplicable as a factor in constructing a combination rate from Flint to Fort Worth via the other gateways if no joint rate had been in effect, and that the joint rate by those routes also was in excess of the aggregate of the intermediate rates, and unreasonable to the extent of that excess. *Williams Co.* v. *Pennsylvania Co.*, 50 I. C. C., 531.

By the route of movement in cases where the Pere Marquette Railway was the originating carrier, Flint is intermediate between Saginaw and Fort Worth, and the maintenance of a higher rate over that route from Flint than from Saginaw was in contravention of the long-and-short-haul rule of the fourth section of the act. Effective September 20, 1917, the rate from Flint to these various gateways was increased to 23.5 cents, since which time the joint rate has not been in excess of the aggregate of intermediate rates subject to the act; and by changes in the joint rates from Saginaw and Flint, respectively, since complainant's shipments, the adjustment has been brought into conformity with the long-and-short-haul provision of the act.

We find that the rate assailed was unreasonable in so far as it exceeded the aggregate of the intermediate rates subject to the act contemporaneously in effect to and from the respective Mississippi River gateways above referred to; that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. No order for the future is necessary.

The reparation sought includes an amount equal to the war-revenue tax on the unreasonable portion of the freight charges collected, but we are without power to award it. *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308.

No. 10490.

THOMAS FRUIT COMPANY

v.

DIRECTOR GENERAL, ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, ET AL.

Submitted May 13, 1919. Decided November 24, 1919.

Rate of 72 cents per 100 pounds on bananas, in carloads, from Mobile, Ala., and New Orleans, La., to Miami, Okla., between February 1, 1917, and October 10, 1917, found not unreasonable. Complaint dismissed.

R. I. Kline for complainant.

Claudian B. Northrop for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale fruit and vegetable business at Miami, Okla., and various other points. By complaint filed February 28, 1919, it alleged that the rate exacted by defendants on 25 carloads of bananas shipped from New Orleans, La., and 1 carload from Mobile, Ala., and delivered at Miami during the period between January 1, 1917, and October 23, 1917, was unjust and unreasonable. Reparation only is asked. Rates are stated in cents per 100 pounds.

Miami is situated in the northeastern part of Oklahoma, about 733 miles from New Orleans, and is served by the St. Louis-San Francisco Railway, Oklahoma, Kansas & Missouri Railway, and Missouri, Oklahoma & Gulf Railroad. The shipments moved by various routes over the lines of defendants, and charges thereon were collected at the legally applicable commodity rate of 72 cents which had been in effect for some years prior thereto. Complainant bases its allegation of unreasonableness upon the fact that during the period in which the shipments moved there was contemporaneously in effect over defendants' lines a rate of 65 cents from the same points of origin to Independence and Coffeyville, Kans., Joplin, Mo., and Vinita, Okla. The latter points are stated to be within a radius of 35 or 40 miles from Miami. The rate to Miami was voluntarily reduced by defendants to 65 cents, effective October 10, 1917. At the

time of hearing complainant operated the only wholesale fruit house at Miami and competed in contiguous territory with dealers at points taking the 65-cent rate.

Defendants show that Coffeyville, Independence, Joplin, and Vinita are main-line points intermediate to Kansas City, Mo., on one or more direct routes from New Orleans. A rate of 65 cents applied on bananas to Kansas City, and, in conformity with our decision in *Rates on Tropical Fruits from Gulf Ports*, 30 I. C. C., 621, defendants' rates do not exceed the Kansas City rates at intermediate points on direct lines. Miami is not on a direct line from New Orleans to Kansas City. In *Tulsa Traffic Asso.* v. *A., T. & S. F. Ry. Co.*, 40 I. C. C., 9, we pointed out that owing to competitive conditions rates from New Orleans to Kansas City were upon a comparatively low basis, and we found that the maintenance of the Kansas City rates on tropical fruits from New Orleans to Joplin and Neosho, Mo., lower than to Tulsa, Okla., was not unduly prejudicial to the latter, and that a rate of 70 cents on bananas from New Orleans to Tulsa, 679 miles, was not unreasonable. Defendants assert that the rate attacked was in line with rates to other points not on direct routes to Kansas City and cite rates of 72 cents to Oklahoma City and Sapulpa, Okla., distant 689 and 694 miles, respectively, from New Orleans. They stated that about the time complainant established its branch house at Miami in October, 1916, the Miami zinc district began to develop very rapidly, but that defendants had no record of carload movements of bananas to Miami prior to that time. It was testified for defendants that the rate to Miami was reduced to 65 cents to put Miami on a competitive basis with other points in the same general territory, but they insist that this voluntary reduction affords no basis for a finding that the former rate was unreasonable. The rates in question were increased on June 25, 1918, in accordance with General Order No. 28 of the Director General of Railroads.

Upon this record we find that the rate assailed was not unreasonable, and an order will be entered dismissing the complaint.

55 I. C. C.

No. 10498.

ROXANA PETROLEUM COMPANY OF OKLAHOMA
v.
DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted July 28, 1919. Decided November 24, 1919.

Rates applicable on tank-car loads of gasoline shipped from Cushing, Okla., to Little Rock, Ark., found unreasonable to the extent that they exceeded or exceed the rates herein found reasonable. Reasonable maximum rate prescribed for the future. Reparation awarded.

Rice & Lyons and *C. A. Talley* for complainant.
T. J. Norton, *S. W. Hayes*, and *F. E. Andrews* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in producing and refining petroleum and its products, with its principal office at Tulsa, Okla., alleges by complaint seasonably filed, as amended, that the rate charged on five tank-car loads of gasoline shipped December 29, 1917, and in January, 1918, from Cushing, Okla., to Little Rock., Ark., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul rule of section 4 of the act to regulate commerce; and that the present rate is unjust and unreasonable in violation of section 10 of the federal control act. Reparation and a reasonable rate for the future are sought. Rates will be stated in cents per 100 pounds.

The shipments, aggregating 270,251 pounds, moved, according to complainant's routing instructions, over the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, to Shawnee, Okla., and thence to destination over the Chicago, Rock Island & Pacific Railroad, hereinafter called the Rock Island, a distance of 364.5 miles. In addition to war taxes of $31.62, transportation charges were collected in the sum of $1,053.97 at a combination rate of 39 cents, composed of rates of 9 cents to Shawnee, 9 cents from that point to Oklahoma City, Okla., and 21 cents from Oklahoma City to Little Rock; Shawnee being intermediate between Oklahoma

City and Little Rock via this route. A joint fifth-class rate of 63 cents, governed by the western classification, was legally applicable over the route of movement, and therefore the shipments were undercharged. Little Rock is intermediate to Memphis, Tenn., over the route of movement, and the Memphis combination was 35 cents, composed of a 19-cent rate from Cushing to Memphis, plus a rate of 16 cents back to Little Rock, which would have been applicable under rule 5 (b) of Tariff Circular 18–A in the absence of a joint rate. The present rate over the route of movement is 79 cents.

A rate of 19 cents contemporaneously applied from Cushing to Little Rock over the following routes: Santa Fe to Arkansas City, Kans., and the Missouri Pacific beyond, 512 miles; Missouri, Kansas & Texas to Joplin, Mo., and the Missouri Pacific beyond, 568 miles; the Missouri, Kansas & Texas to Wagoner, Okla., and the Missouri Pacific beyond, 362 miles; and the Missouri, Kansas & Texas to McAlester, Okla., and the Rock Island beyond, 414.3 miles. The complainant asserts that the shipments were misrouted, but the record discloses no support for that claim.

The 19-cent rate was established via the Missouri Pacific, effective February 28, 1917, and via the Rock Island, through McAlester, effective July 28, 1916. It was testified by a witness for the Santa Fe that, due to carrier competition, this rate resulted from the existence of like rates which then applied over certain lines from Arkansas City and from Ponca City, Okla., to Little Rock, and from Coffeyville, Kans., to Memphis, but that the Santa Fe objected to its publication. It is to be noted, however, that the latter road had participated in a 19-cent rate in connection with the circuitous route of the Missouri Pacific for several years. Effective August 11, 1918, that rate, and on July 29, 1918, the rate to Memphis, were increased to 23.5 cents by the Director General of Railroads. The distance from Cushing to Memphis by way of defendants' lines through Shawnee and Little Rock is 497.6 miles and defendants assert that the Memphis rate was and is abnormally low. The maintenance of the higher rate over the route of movement to Little Rock than to Memphis in contravention of the fourth section of the act was not protected by appropriate application and was and is unlawful. The rate to Memphis was published subject to rule 77 of Tariff Circular 18–A as to intermediate points of origin, but not as to intermediate destinations. If, instead of violating the law, the carriers had extended the application of rule 77 to cover intermediate destinations, reparation would have followed. *Hermann & Co.* v. *N. Y., N. H. & H. R. R.*, 51 I. C. C., 118; *Sunderland Bros. Co.* v. *C., B. & Q. R. R. Co.*, 51 I. C. C., 185.

The allegations of unjust discrimination and undue prejudice were in substance abandoned upon the hearing. With respect to the alleged unreasonableness of the rate complainant relies strongly on the lower rates contemporaneously applicable over the competitive routes, and the rate to Memphis. It also directs attention to rates on gasoline ranging from 15 cents to 25 cents which contemporaneously applied from Cushing to Kansas City and St. Louis, Mo., and to Chicago, Ill., for distances of from 280 to 796 miles. The backhaul combination on Memphis of 35 cents would have yielded earnings of 19.2 mills per ton-mile and 51.9 cents per car-mile based upon the average weight of these shipments, and a 19-cent rate would have yielded 10.4 mills per ton-mile and 28.17 cents per car-mile via the route of movement. The 19-cent rate on petroleum and its products from Coffeyville to Memphis, a distance of 451 miles, was prescribed by us in *National Petroleum Asso.* v. *M. P. Ry. Co.*, 18 I. C. C., 593. The applicable rate of 63 cents would have yielded ton-mile earnings of 34.5 mills and car-mile earnings of 93.4 cents.

Defendants do not attempt to defend the applicable rate and they concede that there was and is no justification for a higher rate over the route of movement than over the other routes mentioned. It is their contention that the rates over the other routes were not high enough. They cited *National Petroleum Asso.* v. *M., K. & T. Ry. Co.*, 47 I. C. C., 355, in which we prescribed rates on petroleum and its products from southeastern Kansas to Oklahoma ranging from 12 cents for 81 miles to 26 cents for 267 miles; also *Merchants Freight Bureau* v. *M. P. Ry. Co.*, 21 I. C. C., 573, in which we prescribed a maximum rate of 23 cents from Coffeyville, Kans., to Little Rock. The short-line distance between the latter points is 318 miles. Defendants also cited joint-line rates on petroleum in Texas upon a higher basis than that sought herein, and average ton-mile earnings of the Santa Fe on all carload freight of 8.4 mills in 1916 and 7.98 mills in 1917. They show that there is a 100 per cent empty return movement of the tank cars used in transporting these shipments.

Upon the facts of record we find that the legally applicable rate to Little Rock was unreasonable to the extent that it exceeded 19 cents per 100 pounds; that the rate over the route of movement is and for the future will be unreasonable to the extent that it exceeds 23.5 cents; that the complainant made the above-described shipments and paid and bore the charges thereon; that it was damaged to the extent that the charges paid exceeded those that would have accrued at the rate of 19 cents hereinabove found to have been reasonable; and that it is entitled to reparation in the sum of $540.48, with interest. This amount does not take into account the difference be-

tween the war taxes paid and those which would have accrued at the rate herein found reasonable. Adjustment of war taxes is not within our province. *Zelnicker Supply Co. v. S. Ry. Co.*, 53 I. C. C., 308.

An appropriate order will be entered.

No. 10586.

JOS. SCHLITZ BREWING COMPANY

v.

DIRECTOR GENERAL, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted August 1, 1919. Decided November 24, 1919.

Rate of 14.2 cents per 100 pounds on beer, in carloads, from Milwaukee, Wis., to Dixon, Ill., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

C. J. Bertschey for complainant.

A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

By complaint seasonably filed, complainant, a corporation engaged in the manufacture of beer at Milwaukee, Wis., alleges that the charges collected by defendants on 40 carloads of beer, shipped from Milwaukee to Dixon, Ill., between January 5, 1917, and March 23, 1918, inclusive, were unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act to regulate commerce. Reparation only is asked. Rates will be stated in cents per 100 pounds.

The shipments moved over the Chicago, Milwaukee & St. Paul Railway to Freeport, Ill., and the Illinois Central Railroad beyond. The cars also contained small quantities of other articles, but the charges thereon, assessed at the less-than-carload rates, are not assailed. Charges were collected on the beer at the legally applicable joint fifth-class rate of 14.2 cents, governed by the Illinois classification.

Complainant introduced no evidence to show that the rate assailed was intrinsically unreasonable, its claim for reparation being founded solely upon the fact that at the time of movement defendants maintained a joint commodity rate of 13.7 cents on beer from Milwaukee to La Salle, Ill., to which point Dixon is directly intermediate over the route of movement. This departure from the provisions of the fourth section of the act, which was protected by an appropriate application not heard with this case, does not of itself afford the basis for an award of damages. *Appalachia Lumber Co.* v. *L. & N. R. R. Co.*, 25 I. C. C., 193. Effective July 1, 1918, a rate equal to the rate to La Salle, as increased under General Order No. 28 of the Director General of Railroads, was published to Dixon over the route of movement, and is not assailed.

We find that the rate assailed is not shown to have been unreasonable or otherwise unlawful, and an order dismissing the complaint will be entered.

No. 10424.

E. I. DU PONT DE NEMOURS & COMPANY
v.
DIRECTOR GENERAL, NORFOLK & WESTERN RAILWAY COMPANY, ET AL.

Submitted May 6, 1919. Decided November 24, 1919.

Rate of 20 cents per 100 pounds legally applicable on sulphuric acid, in tank-car loads, from Hopewell, Va., to Gibbstown and Carney's Point, N. J., found to have been unreasonable to the extent that it exceeded 15.2 cents. Reparation awarded.

Harvey S. Farrow for complainant.
Theodore W. Reath and *Henry Wolf Biklé* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of explosives with its principal office at Wilmington, Del. By complaint filed January 16, 1919, as amended, it alleges that the charges collected on six tank-car loads of sulphuric acid shipped in August, 1917, from its plant at Hopewell, Va., to Gibbstown and Carney's Point, N. J., were unreasonable and unjustly discriminatory. Reparation is asked. Rates are stated in cents per 100 pounds.

Four carloads moved to Gibbstown and two carloads to Carney's Point over the Norfolk & Western Railway, to Norfolk, Va.; New York, Philadelphia & Norfolk Railroad to Delmar, Del.; Pennsylvania Railroad to Camden, N. J.; and West Jersey & Seashore Railroad to their destinations, the distances being 390 miles to Gibbstown and 404 miles to Carney's Point. The rate legally applicable was a combination commodity rate of 20 cents composed of 15.8 cents to Camden and 4.2 cents beyond. A statement of charges filed with the complaint indicates that there are outstanding overcharges on these shipments.

At the time of shipment a commodity rate of 15.2 cents applied on nitrating acid in tank-car loads over the route of movement from Hopewell to these destinations and complainant asks reparation to the basis of this rate. Nitrating acid is a mixture of sulphuric and nitric acids containing approximately 80 per cent of the former and

20 per cent of the latter and, like sulphuric acid, is used in the manufacture of explosives. It has a somewhat higher value than sulphuric acid by reason of its nitric-acid content. Sulphuric acid in tank-car loads is rated sixth class and nitrating acid fourth class in the southern classification, while in the official classification both acids are rated fifth class in tank-car loads. Defendants admitted that commodity rates, where published on the two acids, are generally the same and that where there is a difference the rate on nitrating acid is higher. They stated, however, that the 15.2-cent rate on nitrating acid was a low rate originally established upon the representation of the Norfolk & Western Railway that there would be a large and continuous movement of this acid between these points which apparently did not materialize and that, as there had been no previous movement of sulphuric acid from Hopewell to Gibbstown and Carney's Point, this 15.2-cent rate should not be conclusive in determining a reasonable rate on sulphuric acid. Defendants cited various rates for comparative purposes, including a commodity rate of 19.9 cents on sulphuric acid contemporaneously in effect from Warren, Pa., to Gibbstown, 439 miles; Struthers, Pa., to Carney's Point, 454 miles; and Natrona, Pa., to both Gibbstown and Carney's Point, 397 and 411 miles, respectively.

Complainant contended that the 15.2-cent rate on nitrating acid was not unduly low but was in line with other rates published and concurred in by defendants on both sulphuric and nitrating acids from Hopewell to other points in the same general territory as the destinations here, for example, a rate of 15.8 cents to Newark and other points in northern New Jersey farther distant from Hopewell than Gibbstown or Carney's Point, such as Haskell, Perth Amboy, Ridgefield Park, and Lake Junction. It was further stated on behalf of complainant that future movements of sulphuric acid from Hopewell to Gibbstown and Carney's Point were contemplated. Based on the distance of 390 miles to Gibbstown and an estimated average weight per shipment of 110,000 pounds, which is somewhat less than actual, the 20-cent rate applicable yielded earnings of 10.3 mills per ton-mile and 56.4 cents per car-mile, and the 15.2-cent rate would have yielded 7.8 mills per ton-mile and 42.9 cents per car-mile. Complainant cited *Du Pont de Nemours Powder Co.* v. *P., B. & W. R. R. Co.*, 51 I. C. C., 477, in which we prescribed a rate of 14.6 cents on sulphuric acid from Marcus Hook, Pa., to Hopewell, a distance of 328 miles, which rate contemporaneously applied on nitrating acid.

All the rates hereinbefore discussed were increased subsequent to the movements described in the complaint following our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and on June 25, 1918, were further increased 25 per cent pursuant to General Order No.

28 issued by the Director General of Railroads. The rate now in effect on sulphuric acid in tank-car loads from Hopewell to Gibbstown and Carney's Point over the route of movement is 29 cents and on nitrating acid 22.5 cents. Effective January 28, 1919, the Norfolk & Western published a rate of 22.5 cents on sulphuric acid in tank-car loads from Hopewell to both destinations applicable over the Norfolk & Western to Petersburg, Va., Atlantic Coast Line or Seaboard Air Line to Richmond, Va., Richmond, Fredericksburg & Potomac to Potomac Yard, Va., and Pennsylvania Railroad beyond. The record contains no showing of unjust discrimination.

We find that the rate legally applicable on the shipments was unreasonable to the extent that it exceeded 15.2 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should include all overcharges. This statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10587.

LEHIGH PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL.

Submitted June 21, 1919. Decided November 24, 1919.

Rates on portland cement, in carloads, from Chapman, Pa., to Lugoff, S. C., found to have been unreasonable to the extent that they exceeded the contemporaneous rates to Camden, S. C. Reparation awarded.

F. E. Paulson for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of Portland cement at Chapman, Pa., and other points, and is the successor in interest of the Virginia Portland Cement Company, a corporation formerly engaged in the manufacture of portland cement at Fordwick, Va. By complaint filed April 22, 1919, it alleges that the rates charged on 190 carloads of portland cement shipped from Chapman to Lugoff, S. C., between April and September, 1918, inclusive, were unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section of the act to regulate commerce, and of section 10 of the federal control act. The prayer is for reparation and the establishment of a reasonable rate. Rates are stated in amounts per net ton.

The shipments moved over the Philadelphia & Reading Railway to Park Junction, Philadelphia, Pa., thence over the Baltimore & Ohio Railroad to Potomac Yard, Va., the Washington Southern Railway in connection with the Richmond, Fredericksburg & Potomac Railroad to Richmond, Va., and the Seaboard Air Line Railway beyond. Charges were collected at the applicable rates of $5.70 on the shipments which moved prior to June 25, 1918, and $6.10 on those which moved on and after that date. The latter rate represents an increase of 40 cents under authority of General Order No. 28 of the Director General of Railroads. There were contemporaneously in effect on this traffic over the route of movement to Camden, S. C., 4 miles north of Lugoff, and to Columbia, S. C., approximately 30 miles south of Lugoff, rates of $5 prior to June 25, 1918, and $5.40 thereafter. The departure from the long-and-short-haul rule of the

fourth section in maintaining higher rates to Lugoff than to Columbia was protected by an appropriate fourth section application. Complainant contends that Lugoff should have been and should be accorded the same rates on this traffic as Camden.

Prior to the movement and in anticipation of the construction of a large power plant at Lugoff, the Seaboard Air Line Railway had agreed, upon request, to establish the same class and commodity rates to Lugoff as to Camden. That carrier's tariffs and most of the agency tariffs were amended accordingly, but the agency tariff naming rates on cement from Chapman was not corrected in compliance with the Seaboard Air Line Railway's instructions. Through rates from Chapman and other eastern points to the southeast are usually constructed on the basis of the lowest combination on the Virginia cities. Effective May 1, 1917, the rates from the Virginia cities were made the same to Lugoff as to Camden. Defendant, in a letter read into the record in lieu of appearance at the hearing, admits that the failure to publish from Chapman to Lugoff the same rates on cement as were in effect to Camden at the time when the shipments moved was due solely to an oversight on the part of the agent whose duty it was to publish the tariff. On September 1, 1919, subsequent to the hearing, the $6.10 rate to Lugoff was reduced to $5.60 and, under the authority of General Order No. 28 and *The Fifteen Per Cent Case*, 45 I. C. C., 303, the $5.40 rate to Camden and Columbia was increased to $5.60, thus eliminating the fourth section departure and the alleged undue prejudice.

We find that the rates charged on the shipments were unreasonable to the extent that they exceeded the rates contemporaneously applicable from Chapman to Camden; that the Virginia Portland Cement Company made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those which would have accrued on the basis herein found reasonable; and that the Lehigh Portland Cement Company, as successor in interest of the Virginia Portland Cement Company, is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice and submit it to the defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. As the rate to Lugoff is now the same as to Camden no order for the future is necessary.

No. 10604.

HOLLAND ANILINE COMPANY

v.

PERE MARQUETTE RAILWAY COMPANY AND DIRECTOR GENERAL.

Submitted July 7, 1919. Decided November 24, 1919.

Demurrage charge collected for detention of an interstate carload shipment of coal at Holland, Mich., found to have been unauthorized by tariff. Reparation awarded.

Visscher & Robinson for complainant.

H. A. Sleeper and *Daniel A. Ten Cate* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of dyestuffs at Holland, Mich., alleges by complaint filed March 27, 1919, that a demurrage charge assessed at Holland in March, 1917, by the Pere Marquette Railway Company, hereinafter referred to as defendant, for detention at that point of a carload of coal shipped from Springfield, Ill., was collected without tariff authority and was unreasonable. It prays reparation. Apparently the charge was paid August 16, 1917.

The car was placed by defendant on a private sidetrack at complainant's plant connecting with defendant's rails on March 16, 1917, and was unloaded the same day. It was removed by defendant on March 20. Demurrage of $1 was collected for the one day intervening after expiration of the free-time allowance.

This sidetrack extended in part over land owned by complainant and in part over a tract for the purchase of which complainant held an option from one Webber, the owner. Differences and delays arose in the consummation of the purchase and Webber served notice upon defendant that legal proceedings would be instituted against it if its rolling stock should be moved over this sidetrack. Defendant contends that it was unable to make use of the sidetrack without subjecting itself to an action in trespass; that complainant was responsible for this situation; and that the collection of demurrage was

authorized under rule 1 of its demurrage tariff, which provided in part:

> Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose are subject to these demurrage rules * * *.

Evidence was introduced with respect to the details of the controversy between complainant and Webber, the sidetrack agreement between complainant and defendant, complainant's repeated offers to execute bond to indemnify defendant against recoveries for trespass, and other matters having a supposed bearing upon the question at issue, but in our view of the case it is unnecessary to consider them. Rule 3 (f) of defendant's demurrage tariff expressly provided that "a car held for unloading is considered released when lading is removed * * *." The car was unloaded on the day of placement. It was not held for or by the complainant "for unloading * * * or for any other purpose" after March 16, 1917, and was therefore not subject to the provisions of rule 1.

We find that the charge assailed was assessed without tariff authority; that complainant paid and bore the charge; and that it was damaged thereby, and is entitled to reparation, in the sum of $1, with interest. An order awarding reparation will accordingly be entered.

No. 10471.[1]

STATE OF NEW YORK, COMMISSION OF HIGHWAYS, *v.* DIRECTOR GENERAL, WEST SHORE RAILROAD COMPANY, ET AL.

Submitted October 28, 1919. Decided December 11, 1919.

1. Rates applied on various carload shipments of crushed stone from Tomkins Cove, N. Y., to points in the state of New York found to have been unjust and unreasonable to the extent that they exceeded the rates subsequently established.
2. Rates applied on certain carload shipments of sand and gravel from Buffalo, N. Y., to Ennerdale, Aloquin, and Flint, N. Y., found to have been unjust and unreasonable to the extent they exceeded 8 cents per 100 pounds subsequently established. This latter rate not found to have been or to be unjust or unreasonable.
3. Rates on crushed stone from North Le Roy, N. Y., to points shown in paragraph 2 not shown to have been or to be unjust or unreasonable.

Edward G. Griffin, deputy attorney general, and *Francis W. Brown* for complainant.

John M. Sternhagen for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

AITCHISON, *Chairman:*

These complaints are closely related, and although heard separately can be disposed of in one report. A report was proposed by the examiner who heard the evidence and was served upon the parties. The complainant has filed exceptions thereto.

Complainant is a governmental department of the state of New York which has supervision and control of all highways constructed, improved or maintained in whole or in part by the state. It ships or causes to be shipped by rail large quantities of road-building material, the freight charges on which are directly or ultimately borne by it. In these complaints it attacks the rates charged for the intrastate transportation within New York of crushed stone and of sand and gravel over certain federally controlled railroads from and to specified points within that state. Although in terms other viola-

[1] This report also embraces No. 10506. Same *v.* Director General, Erie Railroad Company, et al.; and No. 10506 (Sub-No. 1), Same *v.* Director General, Lehigh Valley Railroad Company, et al.

tions of law are alleged, the record turns on the issue as to whether the rates charged were unjust and unreasonable. The complainant seeks an award of reparation on shipments which moved during 1918. Throughout this report rates, except where otherwise specified, will be stated in cents per 100 pounds.

While complainant asks for reparation on certain shipments which moved prior to June 25, 1918, the date rates in accord with General Order No. 28 of the Director General of Railroads became effective, the rates charged on such shipments made were not initiated by the President within the meaning of the federal control act, and we are without jurisdiction to consider them. *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 55 I. C. C., 280. The rates which we shall hereafter examine in this report were those made effective on and after June 25, 1918, pursuant to the General Order of the Director General referred to.

No. 10471.

Between June 25 and October 1, 1918, certain carloads of crushed stone were shipped from Tomkins Cove, N. Y., on the West Shore Railroad by way of Newburgh and thence over the rails of the Erie Railroad to Monroe, New Hampton, Howells, Chester, Otisville, Oxford Depot, Highland Mills, and Mountainville. Charges were collected on the basis of a commodity rate of 70 cents per net ton. from Tomkins Cove to Newburgh, a distance of 20 miles, and on basis of the sixth-class rates beyond, as follows:

Newburgh to—	Miles.	Rate.	Newburgh to—	Miles.	Rate.
Mountainville	9	7	Monroe	24	7
Highland Mills	14	7	New Hampton	28	7½
Chester	20	7	Howells	35	7½
Oxford Depot	21	7	Otisville	40	8

These rates yielded earnings ranging from 3.83 cents to 7.24 cents per ton-mile; and, based on the average weight of the shipments of 45⅔ tons, from $1.75 to $3.30 per car-mile. Subsequent to the movement joint commodity rates were established from Tomkins Cove as follows:

Destination.	Rate per net ton.	Date effective.	Destination.	Rate per net ton.	Date effective.
Mountainville	$1.40	Oct. 12, 1918	Monroe	$1.40	Feb. 8, 1919
Highland Mills	1.40	Oct. 12, 1918	New Hampton	1.50	Oct. 4, 1918
Chester	1.40	Feb. 8, 1919	Howells	1.60	Oct. 4, 1918
Oxford Depot	1.40	Feb. 8, 1919	Otisville	1.60	Oct. 4, 1918

Complainant seeks reparation to the basis of these rates.

At the time of movement defendants maintained from Tomkins Cove to points on the Erie Railroad beyond the destinations named above joint commodity rates the same as those subsequently established. The tariff publishing these lower rates to the more distant points contained a notation to the effect that on interstate traffic the rate to any station not provided with a specific rate and which is directly intermediate to a station having a specific rate would be the rate shown to the next more distant station, and that on reasonable request rates on state traffic would be established on one day's notice which would not exceed those in effect to more distant points. From Jones Point, N. Y., less than 3 miles north of Tomkins Cove, also on the West Shore Railroad, joint rates were in effect during the period the shipments moved to five of the eight points of destination named, the same as those subsequently established from Tomkins Cove.

We find that the rates applied on the above-described shipments which moved on and subsequent to June 25, 1918, were unjust and unreasonable to the extent that they exceeded the rates subsequently established to the respective destinations as above shown. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it was damaged thereby to the extent of the difference between the charges paid and those that would have accrued at the joint rates subsequently established; and that it is entitled to reparation with interest on such shipments. As the exact amount of reparation due can not be determined from the record, complainant should prepare a statement in accordance with rule V of the Rules of Practice, and submit it to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10506.

This complaint concerns shipments of sand and gravel which moved from Buffalo to Ennerdale, Aloquin, and Flint.

During the spring and summer months of 1918 complainant shipped several carloads of washed sand and of gravel between the points in question. The shipments weighed approximately 48 tons each. They were switched over the Erie Railroad from the loading point in Buffalo to the New York Central Railroad, and were moved over that railroad to Canandaigua and thence over the Pennsylvania Railroad to destination. The respective distances via this route were 93 miles to Ennerdale, 94 miles to Aloquin, and 100 miles to Flint. Prior to June 25, 1918, the rates applicable to Ennerdale and Aloquin

were 11 cents, and to Flint 12.5 cents. On that date the rates to Ennerdale and Aloquin were increased to 14 cents, and to Flint 15.5 cents, in accordance with General Order No. 28. These were the sixth-class rates. Effective September 24, 1918, a commodity rate of 8 cents was established between the points in question, which has since been maintained. The switching charge of the Erie Railroad of $3.50 per car is absorbed by the line-haul carriers.

Sub-No. 1 concerns shipments of crushed stone from North Le Roy, N. Y., to the same destinations moving during the same period. The shipments averaged about 46 tons per car. They moved via the Lehigh Valley Railroad to Stanley and thence via the Pennsylvania Railroad to destinations. The distances from North Le Roy via this route were 66 miles to Flint, 67 miles to Aloquin, and 68 miles to Ennerdale. A joint commodity rate of $1.20 per ton was applicable to Flint and Ennerdale prior to June 25, 1918, and a rate of $1.40 per ton on and after that date. The shipments to Aloquin were charged upon the basis of the commodity rate of $1.40 per ton applicable to the next more distant point, Ennerdale. Effective July 27, 1918, a specific commodity rate of 7 cents was established from North Le Roy to Aloquin.

We are urged to test the reasonableness of the rates attacked in No. 10506 and Sub-No. 1 by a mileage scale set forth in the complaints and elaborated in testimony offered in behalf of complainant. This scale is based upon a return per ton per mile to the carriers at the average haul of all freight for the year ended December 31, 1916. The average ton-mile earnings on all freight on the New York Central and Pennsylvania railroads for an average distance of 191.7 miles is stated as 6.1 mills. Based upon an average car loading of 48.23 tons, the earnings would be 29.42 cents per car-mile, which is contrasted with the average revenue per car-mile on all freight of 15.355 cents. Taking 6.1 mills as the ton-mile earnings, complainant arrives at a base rate of $1.16 per ton for a distance of 191.7 miles. To this it adds the 15 per cent increase permitted under our order in the *Fifteen Per Cent Case*, 45 I. C. C., 303, and 20 cents per ton under General Order No. 28. It then constructs a scale by applying the same mileage units of progression as those shown in the scale prescribed in *State of Maryland* v. *B., C. & A. Ry. Co.*, 49 I. C. C., 681, and money units of progression of 5 cents per mileage unit of progression from 20 to 100 miles and 3 cents thereafter. On this basis it is contended that rates of $1.10 for distances from 61 to 70 miles and $1.20 for distances from 91 to 100 miles would be reasonable.

We have held that the fact that rates on a certain commodity yield revenue per ton-mile higher than average on all traffic can not be

accepted as conclusive evidence of the unreasonableness of such rates. *Coke Producers Asso. of Connellsville* v. *B. & O. R. R. Co.*, 27 I. C. C., 125–132. Various other rate comparisons were introduced by complainant, but the mere citation of rates for comparable distances without a showing of the conditions under which such rates were established, or the volume of movement thereunder or that the transportation circumstances and conditions are substantially similar, are not very helpful. The defendants showed the rates on crushed stone between various points in New York, with which the rates under attack compare favorably.

In No. 10471 the complainant contended and we held that various rates ranging from $2.10 to $2.30 per net ton on shipments of crushed stone from Tomkins Cove to various points of destination in the state of New York, distant from 29 to 60 miles, were unjust and unreasonable to the extent that they exceeded the commodity rates ranging from $1.40 to $1.60 per ton established by the carriers after the shipments moved. The distances from Buffalo to Ennerdale, Aloquin, and Flint are from 90 to 100 miles, and one of the rates attacked is 8 cents per 100 pounds, equivalent to $1.60 per ton. The distances from North Le Roy to the same destinations are between 60 and 70 miles, and the only rate on crushed stone under attack is the rate of $1.40 per net ton.

The record shows that rates on sand, gravel, and crushed stone in New York are made with reference to commercial conditions and the ordinary movements of traffic, rather than upon a mileage basis. No producers of sand, gravel, and crushed stone have joined in these complaints. It is apparent that these shipments were required because of conditions somewhat of the nature of an emergency.

In No. 10506 we find that the rates charged by defendants on shipments of sand and gravel from Buffalo to Ennerdale, Aloquin, and Flint which moved on and after June 25, 1918, were unjust and unreasonable to the extent that they exceeded the rate of 8 cents per 100 pounds subsequently established. We further find that the complainant made the shipments as above described, and paid and bore the freight charges thereon at the rates herein found unreasonable; and that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable. As the exact amount of reparation due can not be determined upon this record, complainant should follow the procedure outlined in rule V of the Rules of Practice. Upon receipt of a statement prepared and verified as provided by that rule we will consider the entry of an order awarding reparation. The presently maintained commodity rate of 8 cents does not appear to have been or to be unjust or unreasonable.

The complaint in No. 10506 (Sub-No. 1) in addition to attacking the rates on crushed stone from North Le Roy to Ennerdale, Aloquin, and Flint also asks for the establishment of rates from Le Roy to the same destinations. No shipments are shown to have moved from Le Roy, and the carriers have established a rate of $1.20 per ton on crushed stone from that point via the New York Central and the Pennsylvania railroads to Ennerdale and Aloquin, a distance of about 50 miles. This rate appears properly adjusted with the rate of $1.40 from North Le Roy, distance and other conditions considered. The rates applied on the shipments on crushed stone in Sub-No. 1 are not shown to have been or to be unjust and unreasonable. The complaint in Sub-No. 1 will be dismissed.

By Division of Traffic Circular No. 9, dated April 14, 1919, the carriers under federal control were authorized to apply rates on crushed stone, sand, and gravel shipped during the period from May 1 to December 31, 1919, inclusive, when for use in road building or road maintenance, and when consigned to and the freight thereon is paid by a state government, 10 cents per net ton less than the regularly published tariff rates in effect at the time, but with a minimum charge of 40 cents per net ton. This special authorization may be applicable with respect to the rates herein found to be reasonable, but we have no authority to require it to be observed.

No. 9971.

NATIONAL POLE COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, DIRECTOR GENERAL ET AL.

Submitted March 3, 1919. Decided December 8, 1919.

Rates on cedar poles and piling transported on more than one car, from points in Washington, Oregon, Idaho, Montana, and British Columbia to points in various states principally east of the Rocky Mountains, found to have been and to be unreasonable in so far as they exceeded and exceed the rates contemporaneously applicable on fir lumber in single carloads. Reparation awarded.

John S. Burchmore and *G. R. Empson* for complainant.
Charles Donnelly and *B. W. Scandrett* for transcontinental lines.
R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

ATCHISON, *Chairman:*

This case was made the subject of a proposed report by the examiner, which was served upon the parties. Exceptions thereto were filed by both complainant and defendants. The exceptions have been considered carefully, and the whole record has been canvassed by us. We have found it necessary to alter the findings suggested and to make other changes in the report unnecessary to refer to in detail.

By the complaint in this case, filed November 1, 1917, and amended October 21, 1918, it is alleged that the "group C" rates charged on cedar poles and piling transported on more than one car, from points in Washington, Oregon, Idaho, Montana, and British Columbia to points in various states principally east of the Rocky Mountains, published in agent Countiss' transcontinental freight bureau eastbound tariffs, were and are unreasonable and unduly prejudicial to the extent that they exceeded and exceed the corresponding "group D" rates charged on fir and certain other grades of lumber and on shipments of cedar poles and piling in single cars. The amendment brings in the Director General of Railroads as a party defendant and assails the present increased rates from and to the same points. Reasonable rates for the future are sought, together with reparation on all multiple-car shipments within the statutory period.

Complainant, a Michigan corporation, with headquarters at Escanaba, in that state, is the largest producer and distributor of cedar poles and piling in the United States. Poles are its principal product and are used by telegraph, telephone, and power companies, electric railways and the like in the erection of transmission lines. Piling, produced incidentally and consumed chiefly by the railroad companies, differs only in that it lacks the taper of the poles. Complainant's western operations are conducted on the north Pacific coast, and in eastern Washington, northern Idaho, western Montana, and a portion of British Columbia, through branch offices at Everett and Spokane, Wash. Finished poles are produced by felling the trees, trimming off the branches, removing the bark, and sawing the butts and tops squarely across. They are cut and sold in lengths of 20 feet and upwards, in multiples of 5 feet. Those of 35 feet and under are sold mostly in the west, in the sparsely settled districts of which long poles are not required. It is testified that 75 per cent of the long poles should go to the middle west and central freight association territory, complainant's normal market; and in order to make prompt deliveries in competition with southern white cedar and other poles, stocks of western cedar poles are maintained at St. Paul, Minn., Hawthorne, Ill. (within the Chicago switching district), and Toledo, Ohio.

Eastbound rates from the territories west and east of the Cascade Mountains, denominated the coast and Spokane groups, are carried on all forest products under classifications or groupings of those commodities. Except as otherwise stated, rates mentioned hereinafter are those in effect when the original complaint was filed and are in cents per 100 pounds. Group C rates apply on poles and piling or any lumber requiring more than one car for each load, while group D rates apply on poles and piling where the loading is in single cars, and also apply on single cars of fir, spruce, pine, and hemlock lumber, sash, doors, and other millwork, and inside finish. The rates covering groups A, B, and C, embracing shingles, and cedar lumber of whatever length, are the same in all instances, and are from 10 to 14.5 cents higher than the group D rates.

Poles are loaded on flat cars, between upright stakes, with the butts and tops alternating in order to make a firm load and avoid shifting. Half way up the load the stakes are wired together across the car with 10 strands of eighth-inch wire. The balance of the load is placed upon the wires, drawing the stakes toward the center of the car, and when the loading is complete the stakes are wired together across the top. The stakes and wire are furnished by the shipper, and at destination are cut and the poles rolled off the car. The weight of stakes and wire runs as high as 1,850 pounds per load,

and defendants make the shipper an allowance of 500 pounds for each car staked. Long poles, requiring two cars for their carriage, are loaded upon a bearing timber or bolster across the floor of each car, to pivot the load, while the cars are blocked apart to eliminate the slack and are chained together to prevent uncoupling. The chains and the blocks necessary to be used in connection with double loads are furnished by the carrier. The same practice is observed where three cars are used and the loading is in two sections, the center car bearing one end of each section of the load. In some cases one car serves merely as an idler, protecting an overhanging or projecting load from the other car, or, in addition, carries a load of short poles. In still other cases two cars are individually loaded with short poles, with a superimposed load of long poles borne by both cars.

In single cars the minimum weights are 40,000 pounds on poles under 40 feet in length and 50,000 pounds on poles 40 feet long or longer, subject to actual weights when cars are loaded to full visible capacity, that is, covering 90 per cent of the floor space and to a height of 13 feet above the top of the track rail. For two-car and three-car loads of lumber, timber, poles, and piling of any of the woods mentioned, the minima are 66,000 and 99,000 pounds, respectively, or at the rate of 33,000 pounds per car, without exception.

It is pointed out that long poles loaded upon a single car of sufficient length to contain them take a group D rate, whereas if a shorter car is furnished for the load, necessitating the use of another car, the higher group C rate applies; and this even where the second car, while serving to protect the overhanging load of the first and although the overhang may comprise but one or a few long poles, also carries shorter poles and each car is loaded to the single-car minimum. An exhibit compiled from the equipment register indicates that four representative transcontinental lines reaching the inland empire, east of the Cascades, respectively own from 1,414 to 9,508 40-foot open cars, while of open cars 45 feet or more in length the Northern Pacific Railway owns but 299, the Chicago, Milwaukee & St. Paul Railway has 10, and the others none; a materially smaller proportion of long cars than are owned by carriers in other territories.

A list of 200 single-car shipments by complainant in 1916 and 1917 averaged 50,623 pounds per car. Of 52 such shipments containing or consisting of 45-foot poles, including 4 cars containing 50-foot poles, the average weight was 66,427 pounds. Seventy double-car shipments averaged 78,249 pounds, approximating 39,125 pounds per car, and 12 triple-car shipments averaged 116,575 pounds, or approximately 38,858 pounds per car. A total of 563 double loads shipped by members of the Western Red Cedar Association are shown to

have averaged 77,011 pounds, or 38,505 pounds per car, and 147 triple loads averaged 130,369 pounds, or 43,456 pounds per car.

The rates from the Spokane group to St. Paul, Minn., for example, were 42 cents for single and 52 cents for multiple loads. Beyond St. Paul or Minnesota Transfer, Minn., this dual basis does not obtain, the rates for single, double, and triple car loading being the same and the minimum weights uniformly less. The rates to Chicago, Ill., are made by the addition in each instance, without distinction, of an arbitrary of 10 cents over St. Paul. On traffic to Anaconda and Silver Bow, Mont., the difference is but 2.5 cents, and some of the defendant transcontinental lines carry across the mountains in western territory in a number of cases equal rates on single and multiple loads. From British Columbia equal rates are carried in connection with the defendant Minneapolis, St. Paul & Sault Ste. Marie Railway, through some of the points of origin here concerned, to St. Paul and Minnesota Transfer.

On long poles moving to St. Paul, ranging from 45 to 55 feet in length and from 1,000 to 1,400 pounds in weight, the additional 10 cents for two cars amounts to from $1 to $1.40 per pole. Complainant also makes the point that on the two-car average load of 78,249 pounds, above mentioned, it would amount to $78.25 per trip for the additional car, and that 12 such trips would bring in a gross revenue equal to the initial cost of a 50-foot steel flat car. On two single-car shipments, at the 40,000-pound minimum and 42-cent rate, the total charges would be $336, while on a two-car shipment, at the 66,000-pound minimum and 52-cent rate, the charges would be $343.20, or $7.20 higher. Defendants contend on the other hand that the earnings on a single shipment at the 50,000-pound minimum and the 42-cent rate would be $210, while the earnings on a double load at the 52-cent rate and 66,000-pound minimum would only be $171.60 per car. An exhibit of shipments during 1915 and 1916 by 12 members of the Western Red Cedar Association, including complainant, shows the total number of poles 40 feet and under in length and estimated weight for same, which would indicate that the great majority could have been handled in single cars, and it is urged that the imposition of the higher charges is in large measure due to the failure of the carriers to furnish adequate equipment. Apart from this, the practical immunity of the commodity from damage or loss, the relatively low tare weight and cost of the equipment used, and the fact that in the case of each multiple shipment the equipment is handled as a single car are cited in support of the contention that the basic lumber rates should apply as maxima. Comparative revenues, in cents per 100 pounds, at rates of 42 and 52 cents, on gross weight of load and car, based on average loadings, are thus exhibited:

Commodity.	Weight.			Revenue per load.		Gross-weight revenue per 100 pounds.	
	Net.	Tare.	Gross.	42 cents.	52 cents.	42 cents.	52 cents.
	Pounds.	*Pounds.*	*Pounds.*			*Cents.*	*Cents.*
Poles, single loads	50,600	26,000	76,600	$212.50	.....	27.7	.....
Long poles, single loads	66,427	36,000	102,427	278.99	.....	27.3	.....
Poles, double loads	78,249	52,000	130,249	328.65	$406 89	25.2	31.3
Poles, triple loads	130,389	78,000	208,389	547.55	677.92	26.3	32.5
Fir lumber, single loads	57,000	35,000	92,000	239.40	.....	26	.....

As explained by defendants' sole witness, the adjustment with respect to poles followed the rules established for the movement of lumber from coast points where two or more cars were required, in which cases an arbitrary, generally of 10 cents, was added. The minimum in double and triple loading was fixed on the Master Car Builders' rule that, where the load was on bolsters and raised off the deck of the car, the weight thus bearing on a single point should be limited to 60 per cent of the normal carload capacity; and as a great many of the flat cars in service at the time were of 50,000 pounds capacity, and were allowed 5,000 pounds excess loading, the maximum and minimum were brought together at 33,000 pounds per car. The minimum weights on lumber are 60,000 pounds in open cars exceeding that capacity, and, on smaller cars, 5 per cent less than the marked capacity, as against 40,000 and 50,000 pounds on poles in single cars. The witness' impression was that the visible-capacity minimum on single cars was fixed with reference to the 40-foot poles, the provision relating to floor space occupied having in contemplation the 5-foot differences in pole lengths.

The minimum weights applicable on shipments requiring two or three cars are, as shown, the same whether the commodities transported are poles and piling, or lumber and timber; and whether fir or cedar. Evidently the Master Car Builders' Rules, rather than any disability or inability of the shipper to load a given amount, have been controlling in the prescription of the minima on these multiple car-lot shipments.

This witness submitted three exhibits covering a large number of single, double, and triple car shipments of poles from the Spokane district, showing net and gross weights, gross revenues, and net revenues per 100 pounds on the gross weights. In that connection it was pointed out that on the single-car shipments under the 42-cent rate the average return on the gross tonnage was 65 per cent of that on the revenue tonnage, while on two-car and three-car shipments under the 52-cent rate the average returns on the gross tonnage were but 56 and 57 per cent, respectively, of the revenue tonnage returns.

It also was observed that on 169 shipments at the 42-cent rate the average earnings were $233.62 per car, while on 36 double-car shipments and 7 triple-car shipments at the 52-cent rate the average earnings per car were $192.64 and $201.53, respectively. Like exhibits covering single and multiple loads of piling were analyzed as showing ratios of gross to revenue tonnage returns to be 63, 59.4, and 63.3 per cent, respectively. Additional similar exhibits were filed, all intended to show that even with a 10-cent higher rate the carriers' earnings on multiple loads are smaller than on single loads.

It is not shown that the multiple-car shipments entail materially increased operating difficulties or hazards, although it is testified that such loads are more apt to shift, or, on the other hand, that terminal or other incidental services are appreciably less than in the movement of the same number of cars to the same points bearing single loads.

Defendants cite the fact that in the Pacific coast lumber cases the Commission authorized the higher rates complained of, and that upon petitions for rehearing, *Pacific Coast Lumber Mfrs. Asso.* v. *N. P. Ry. Co.*, 16 I. C. C., 465, 467, it was said:

> The Commission entertains no doubt of the soundness of the principle and the finding that from this territory cedar lumber, shingles, and long timber requiring two or more cars may reasonably take higher rates than fir and spruce lumber.

Since the hearing and pursuant to General Order No. 28 of the Director General of Railroads, and supplemental orders, a general increase of approximately 25 per cent has been made in freight rates on the railroad lines under federal control. In connection therewith, and in his answer in this case, the Director General has certified, as in *Willamette Valley Lumbermen's Asso.* v. *S. P. Co.*, 51 I. C. C., 250, that the increases were necessary to defray the expenses of federal control and operation, etc. Among the rates here drawn in question, those on single and multiple loads from the coast group to St. Paul have been increased from 45 and 55 cents to 50 and 60 cents, respectively; from the Spokane group to St. Paul the former rates of 42 and 52 cents have been increased to 47 and 57 cents, respectively. The increase of the respective rates by one amount, as in these instances, in itself tends to bring the gross revenues per 100 pounds therefrom more nearly together.

In *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, 625, we said that carriers should apply to the movement from the north Pacific coast and the inland empire of long lumber, timbers, poles, and piling too long to be loaded on a single car, rates which do not exceed the rates contemporaneously maintained on fir lumber in single carloads. Following the conclusions reached in that case and upon the facts in this record we find that the rates on cedar poles and

piling transported on more than one car, from and to the points involved, were, are, and for the future will be unreasonable in so far as they exceeded, exceed, or may exceed the rates contemporaneously maintained on fir lumber in single carloads.

As the applicable carload minima are the same on fir and cedar using two or three cars, no question as to a minimum is presented by the record for our determination. We further find that complainant made shipments of double and triple loads of cedar poles and piling under the rates assailed within the statutory period and paid and bore the charges thereon; that complainant was damaged thereby and is entitled to reparation in the difference between the charges paid and those that would have accrued on the basis herein found reasonable. The amount of reparation due can not be determined on this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. The statement so prepared and verified should then be filed with the Commission as the basis of an order awarding reparation.

An appropriate order will be entered.

DANIELS, *Commissioner*, dissenting:

Elements are present in the transportation of multiple cars of cedar poles and piling that differ materially from those that control with respect to the transportation of fir lumber in single cars. The traffic under discussion is peculiar in character and requires exceptional use of the equipment employed. The majority find that the rates on multiple cars of cedar poles and piling should not exceed the rates contemporaneously maintained on fir lumber in single carloads. The latter rates are also the rates in effect on cedar poles in single cars. It is my opinion that the carriers are entitled to rates per 100 pounds on multiple cars used for transporting cedar poles or piling of unusual length, in excess of that derived from the transportation of single cars of the same commodities. Where two cars are used for this transportation their loading capacity must, for purposes of safety, be shrunk 40 per cent, depriving the carriers of the full efficiency of their equipment. This loss should be compensated in some manner, and there appears to be no better method than the maintenance of rates per 100 pounds on multiple cars in excess of those contemporaneously applicable on like traffic in single cars. A greater risk is incurred on multiple cars than on single cars, as it is necessary to have the poles pivoted on the multiple cars to avoid their disarrangement in crossing the mountains and turning sharp curves, while such hazardous loading is not required of single cars. An additional expense is incurred

with respect to the multiple cars as the carriers are required to block them apart and securely chain them together to insure safe transportation.

With reference to the fact that in this case and also in *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, it is stated that the gross-weight revenue per 100 pounds would be substantially the same on the multiple cars, based on actual loading, as on fir lumber in single cars, it may be observed that the finding of the majority reduce the gross-weight revenue 2.1 cents per 100 pounds on double cars of poles and 1 cent per 100 pound on triple cars of poles, below the gross-weight revenue on single cars of the same commodity. Furthermore, it is in evidence that the ratio of the revenue tonnage to the gross tonnage on single-car shipments of poles is substantially greater than on two-car and three-car shipments of like traffic.

If there appear good and substantial grounds for approving higher rates per 100 pounds on long poles and piling carried in multiple carloads than on the same article in single cars, the fact that carriers in other sections of the country apply the same rates on multiple cars as on single cars is not determinative of the issue presented.

HALL, *Commissioner*, dissenting:

The majority report presents two questions for determination. Shall cedar in this form take the same rate as fir? Shall a double or triple carload take the same rate as the single carload where the shipper has occasion to ship articles too long to move on one car?

As stated in the majority report the Commission in *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, 625, said that carriers *should* apply to the movement from the north Pacific coast and the inland empire of long lumber, timbers, poles, and piling too long to be loaded on a single car, rates which do not exceed their rates contemporaneously maintained on fir lumber in single carloads. No order was entered and the Director General has not complied with the suggestion made. As a result the rates on these articles remain higher, usually by 10 cents per 100 pounds, than the rates on fir lumber in single carloads. The Commission has sanctioned and these carriers apply rates on cedar lumber in single carloads higher by the same amounts than their rates on fir lumber in single carloads. The *Pacific Coast Lumber Cases*, 14 I. C. C., 1 et seq.; 16 I. C. C., 465.

Whatever reasons justify higher rates on cedar than on fir, when both move as lumber in single carloads, would seem at least as persuasive when both move as long poles or piling in double or triple carloads. At present each takes in that form the same rate as cedar lumber in single carloads. The findings and order here made reduce this rate on cedar poles to the fir-lumber basis but leave other long

poles and piling, e. g., fir, on the higher cedar lumber basis, a reversal of what we have found to be the proper relation of these woods when moving as lumber. And in spite of the lighter car loading and lighter car earnings resulting from the use of two or three cars to move one load, the rate to be applied on cedar is the same as if only one car were used and that were loaded with fir lumber. This ill consorts with the additional service and equipment furnished by the carrier.

For these reasons and those stated in the separate expression of Commissioner Daniels I am unable to concur in the findings of the majority.

No. 9243.

CHARLES L. CAMPBELL ET AL.

v.

SOUTHERN EXPRESS COMPANY ET AL.

Submitted March 15, 1917. Decided December 8, 1919.

Complainants have not filed a supplemental complaint making the Director General a party defendant, although opportunity has been afforded them to take such action. As the relief here sought is with respect to rates and service for the future, complaint is dismissed.

Ross A. Collins, Earle N. Floyd, and *M. C. Moore* for complainants.

Robert C. Alston and *Philip H. Alston* for Southern Express Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner:*

Charles L. Campbell, principal complainant, is manager of the Louisiana Strawberry Distributing Company with an office at Independence, La.; this company sold and shipped strawberries in carload lots, and in 1916 it handled 62 carloads of strawberries for farmers in and about Sanford, Miss. Thomas L. O'Donnell, a strawberry grower of Sanford, joined in the complaint.

Sanford is a local station on the Gulf & Ship Island Railroad, 14 miles from Hattiesburg and 75 miles from Jackson, both in Mississippi. The Southern Express Company operating over the lines of

the Gulf & Ship Island Railroad afforded the only express service available at Sanford. The Southern and the Adams Express Companies are the defendants here. The Southern Express Company, being the originating carrier and the principal defendant, is referred to hereinafter as the defendant; the Adams filed answer but was not represented at the hearing.

The complaint alleged that the two methods by which defendant handled strawberry shipments—to wit, by crates and refrigerator boxes in open express cars—were inadequate, unjust, and unreasonable; it alleged, moreover, that the defendant refused to accept carload shipments of strawberries standing on track at Sanford, said shipments being loaded into first-class express refrigerator cars equipped for passenger-train service, the cars being provided by and at the expense of the complainants. Complainants asked that an order be entered requiring the defendant to establish and put into effect refrigerator express rates for shipments of strawberries in carload lots from Sanford to various named points in the eastern and central states, such shipments to be carried in passenger trains or trains making passenger-train time. In answer, the Southern Express Company denied that its methods of carrying strawberries were inadequate, unjust, or unreasonable, and stated moreover that it did not own refrigerator cars equipped for passenger-train transportation, and that its contracts with railroad lines over which it operated did not contemplate or provide for the transportation of strawberries in refrigerator cars upon passenger trains.

At the hearing, the issues were not modified.

The bulk of complainants' shipments moved to markets in the eastern and central states. There were four modes of shipment from Sanford to these markets. The defendant offered the two kinds of service alluded to in the complaint. It accepted shipments of strawberries in crates for "open" or "dry" express service, carrying the crates in open express cars with other commodities. The cars did not move under refrigeration and the berries deteriorated rapidly; the distance to which they might safely be shipped in this way was therefore necessarily limited. The defendant maintained an any-quantity rate for this service. At the hearing, testimony was offered as to the unreasonableness of the any-quantity rate as applied to carload shipments; but since the complainants found this method of shipment unsatisfactory for small shipments, and asked only for carload rates for refrigerator service, a service which the defendant refused to afford, the reasonableness of the any-quantity rate is not in issue. The tariff of the Southern Express Company also provided for shipment of strawberries in portable ice boxes, a service which is alluded to in the record as "pony refrigerator service." This method

of shipment was not satisfactory to complainants because the ice boxes occupied a large amount of space; complainants alleged that pony refrigerator service was not suitable for carload shipments.

If complainants did not avail themselves of the service afforded by the Southern Express Company, they might ship strawberries in freight refrigerator cars over the Gulf & Ship Island Railroad as the originating carrier. Their objection to this service was that it was slower than the express service, consuming in some cases from one to three days longer. The freight refrigerator cars lack the elliptical springs with which express refrigerator cars are equipped. Strawberries shipped by freight brought from $100 to $300 per car less than carloads shipped by express. One witness testified that on express and freight shipments made the same date, a car shipped by express brought $248.40 more than a car shipped by freight, although the latter traveled a shorter distance.

The fourth method of shipment was the one most used by complainants. The Gulf & Ship Island attached complainants' express refrigerator cars to passenger trains, moving them to Jackson, Miss. Shipments were billed to complainants at Jackson and rebilled there by the agent of the American Express Company to various destinations. In 1916, 41 out of a total of 62 cars shipped from Sanford moved over these routes, which it appears from the record are circuitous. It is 870 miles to Cincinnati and 1,080 miles to Philadelphia by way of Jackson over the line of the American Express Company; if shipment moved over the line of the Southern Express Company to Hattiesburg, however, the distance to Cincinnati would be only 730 miles, and to Philadelpha, 1,100 miles.

The Sanford berries compete in the markets with berries grown in the vicinity of Independence and Hammond, La., to the southwest of Sanford on the Illinois Central Railroad. The Sanford season begins about a week or ten days later than the Independence season and lasts about two weeks longer. The Independence growers were provided by the American Express Company with carload rates and with express refrigerator cars to the extent of its ability to provide them. Complainants asserted that the refusal of the Southern Express Company to afford them similar service was a serious handicap to the strawberry industry at Sanford.

As to the adequacy of the service which it furnished, defendant asserted that the "pony refrigerator service," which complainants found unsatisfactory, has proved satisfactory to other strawberry shippers. This assertion was rebutted by testimony of Florida shippers.

In any event, defendant questioned the jurisdiction of the Commission to order it to perform express refrigerator service, relying

on *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208, and on *R. R. Commissioners of Florida* v. *Southern Express Co.*, 44 I. C. C., 645. In the latter case we held that we were without authority to require the carriers to acquire refrigerator cars for use in express service. Complainants in the instant case, however, undertook to furnish the equipment, and asked only that the defendant haul express refrigerator cars, furnished by the shipper. The cases cited are therefore not controlling.

Defendant further questioned our jurisdiction in this case, contending that it did not hold itself out to carry shipments of strawberries in carloads and that it had no contract provisions with the railroads for such service. In view of the disposition which must be made of the case no opinion is rendered with respect to this contention.

On June 21, 1918, an agreement was entered into between the United States, represented by the Director General of Railroads acting on behalf of the United States and the President, and the Adams Express Company, American Express Company, Southern Express Company, and Wells Fargo & Company, under which said express companies were by mutual agreement between themselves merged into the American Railway Express Company for the period of federal control of transportation systems, and said American Railway Express Company entered into a contract with the Director General, effective July 1, 1918, and to continue during the full period of federal control as provided in the federal control act, for the performance of express service on transportation lines and systems under federal control and under the direction of the Director General.

As pertinent to the history of the case, it should be stated that after the argument in the case, effort was made by us to effect an agreement between the parties, and the Southern Express agreed to afford the complainants such relief as it could. Complainants subsequently stated that the situation remained unchanged. We have repeatedly advised complainants that it was necessary for them to file a supplemental complaint making the Director General a party, if they desired us to enter an order in conformity with their prayer. A supplemental complaint not having been filed, an order of dismissal will be entered.

No. 9925.[1]

GARRETT LUMBER COMPANY ET AL.

v.

CHESAPEAKE & OHIO RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted April 8, 1919. Decided December 10, 1919.

1. Increased commodity rates on lumber in carloads from the Virginia cities to points in central freight association territory found justified. Increased sixth-class rates found not justified for application on lumber in carloads.
2. Fourth section applications for authority to continue the maintenance of lower rates on lumber from the Virginia cities to points in central freight association territory than from and to intermediate points denied via all lines as to points of origin, and via the direct lines as to points of destination, but granted, with qualifications, as to intermediate destinations reached by the indirect lines.

Claude W. Owen for complainants.

Loyall, Taylor & White and *G. A. Wingfield* for Virginian Railway Company.

A. P. Humburg and *Chas. J. Rixey, jr.*, for Director General of Railroads.

R. Walton Moore, Frank W. Gwathmey, Charles D. Drayton, and *W. S. Bronson* for other defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

HALL, *Commissioner:*

This case was heard and submitted with Investigation and Suspension Docket No. 1148, *Lumber from Virginia to Northern Points*, and certain fifteenth section applications for permission to increase rates on lumber from Virginia cities to points east of the Buffalo-Pittsburgh line and from points south of the Virginia cities to points in central freight association territory. On June 24, 1918, the carriers withdrew the fifteenth section applications and on July 29, 1918, the tariff suspended in Investigation and Suspension Docket

[1] This report also embraces portions of Fourth Section Applications Nos. 458, 542, 603, 682, 703, 799, 918, 928, 945, 1065, 1074, 1548, 1561, 1563, 1572, 1573, 1787, 1806, 1911, 1925, 1952, 2019, 2045, 2060, 2138, 2188, 2659, 3238, 3239, 3287, 3517, 3619, 3799, 3918, 3965, 4218, 4219, 4220, 4578, and 4966.

1148 was cancelled. No further reference will be made to those matters. A report proposed by the examiner who heard the evidence was put forth and exceptions thereto were filed by the defendants, on which argument was later had. Rates will be stated in cents per 100 pounds.

For many years prior to 1915 the commodity rate on lumber from the Virginia cities to Pittsburgh Pa., was 16 cents, the same as the sixth-class rate.[1] This commodity rate also applied to Louisville, Ky., Cincinnati and Columbus, Ohio, and related points, the sixth-class rates to which ranged from 16 to 18 cents. It also applied from certain[2] of the Virginia cities to Buffalo, N. Y., and related points, the sixth-class rate from and to which was 19 cents. The rates to the remainder of central freight association territory, being the region west of the Buffalo-Pittsburgh and north of the Louisville-Cincinnati-Columbus zones, were the sixth-class rates. The rates to the region just east of the Buffalo-Pittsburgh line were less than the sixth-class rates. Where the rates were the same in amount as sixth-class rates they were published as commodity rates by some lines, and as class rates by other lines.

In 1915, following *The Five Per Cent Case*, 32 I. C. C., 325, both the class and commodity rates were increased. For example, to destinations taking rates of 16, 20, and 24 cents, the rates became 17.3, 21.3, and 25.5 cents, respectively. On August 1, 1917, as a result of our first order in *The Fifteen Per Cent Case*, 45 I. C. C., 303, the sixth-class rates were again increased, the then existing rates of 17.3, 21.3, and 25.5 cents becoming 20, 25, and 30 cents, respectively. No increase in the commodity rates on lumber was authorized by our first order in *The Fifteen Per Cent Case.*

The commodity rates on lumber, the sixth-class rates in effect prior to *The Fifteen Per Cent Case*, and those now in effect to four representative destinations from Petersburg, a representative Virginia city, are shown in the following table:

From Petersburg to—	Short-line distance, miles.	Sixth class prior to fifteen per cent case.	Present.	Commodity rates.	
				Prior to fifteen per cent case.	Present.
Buffalo	575	19.8	26.5	17.3	23
Pittsburgh	441	17.3	26	17.3	23
Cincinnati	608	18.9	29.5	17.3	23
Columbus	600	17.5	26	17.3	23

[1] The term Virginia cities, as used in this report, includes all Norfolk & Western main-line stations from Roanoke to Norfolk, inclusive, and from Roanoke to Basic, inclusive; also all Chesapeake & Ohio main-line stations from Iron Gate to Norfolk, inclusive, including both lines between Iron Gate and Richmond.

[2] Norfolk, Richmond, Portsmouth, Newport News, Petersburg, Suffolk, and Wakefield, Va.

The application of these increased sixth-class rates from and to some points and of commodity rates from and to other points resulted in many departures from the long-and-short-haul rule of the fourth section of the act to regulate commerce, and other apparent inconsistencies and discriminations.

The complaint before us was filed October 20, 1917, by corporations engaged in the manufacture of lumber at Cartersville, South Boston, Ivor, Richmond, Jetersville, and Lynchburg, Va., and attacked the entire adjustment of lumber rates from the Virginia cities and a few near-by points. It was alleged that the application of the sixth-class rates on lumber then in effect from the territory of origin to central freight association territory was unreasonable, unjust, and unduly discriminatory, and that the adjustment of rates on lumber to that territory was unjustly discriminatory against the points of origin and destination from and to which the increased sixth-class rates applied, in favor of the points from and to which commodity rates applied. The prayer was for reparation on all shipments made since August 1, 1917, and the establishment of commodity rates on lumber to all points in central freight association territory on the basis of the sixth-class rates in effect prior to *The Five Per Cent Case.*

Various fourth section applications of the carriers by which they seek authority to continue the maintenance of lower rates on lumber from and to the points covered by the complaint than from and to intermediate points were set for hearing with the complaint.

In *North Carolina Pine Asso.* v. *N. & W. Ry. Co.*, 47 I. C. C., 460, decided November 21, 1917, after the filing of this complaint, we found that the carriers had justified the reasonableness of the increased rate of 17.3 cents on lumber from the Virginia cities to Buffalo, Pittsburgh, and related points, made effective following *The Five Per Cent Case.* That rate also applied to Louisville, Cincinnati, Columbus, and related points over greater distances than that to Pittsburgh. In view of those facts complainants sought on brief and argument restoration as a commodity rate of the 17.3-cent rate in effect prior to *The Fifteen Per Cent Case* in lieu of the 20-cent sixth-class rate established following that decision. Our second permissive order in that case, entered March 26, 1918, allowed an increase of 1 cent in the rates on lumber, and under General Order No. 28 of the Director General both the class rates applicable on lumber and the commodity rates were increased, effective June 25, 1918. By supplemental complaint, filed March 13, 1919, after the hearing, the Director General was made a party defendant and answered, but no further hearing was asked or had.

Our decisions and permissive orders in *The Five Per Cent Case* and *The Fifteen Per Cent Case, supra,* under which defendants were

allowed to increase their rates did not approve any specific rates as reasonable in themselves or as properly adjusted with other rates, and did not justify in advance any rates which might be published as a result thereof. The burden of proof is still upon the carriers. *Globe Soap Co.* v. *A. & S. Ry. Co.*, 40 I. C. C., 121; 45 I. C. C., 25.

Lumber produced in eastern Virginia is known to the trade as North Carolina pine. Most of it is of low grade, cut from second-growth timber. The output during the year 1916 of one of the larger mills in this territory was graded No. 1, No. 2, No. 3 in an aggregate of 19.6 per cent, and 34.2 per cent consisted of box-bark strips and other No. 4 lumber. The remaining 46.2 per cent was too poor to classify. Complainants' chief competition comes from southeastern and Mississippi Valley territories. There the lumber is cut from virgin timber and runs largely to the higher grades. The principal market for the Virginia mills is in trunk line territory—i. e., Maryland, Pennsylvania, New York, and the New England states, to which their higher grades of lumber are shipped. To the territories of destination covered by this proceeding their shipments are mostly of the lower grades, about nine-tenths being of box-bark strips and other No. 4 lumber, and the average price received therefor is said not to exceed the average cost of their total output.

Defendants contend that sixth class is the normal and reasonable basis of rates on lumber from the Virginia cities because of—(1) its antiquity; (2) its general application throughout official classification territory; (3) its alleged approval by us in *Massie & Pierce Lumber Co.* v. *N. & W. Ry. Co.*, 33 I. C. C., 14; (4) its relation to the lumber rates between points in central freight association and trunk line territories; (5) its yield in car-mile earnings as compared with the average car-mile earnings on all freight traffic in the eastern district; and (6) the increased value of lumber.

Lumber is rated sixth class in the official classification, and sixth-class rates, in the absence of commodity rates, apply throughout central freight association territory. But from the chief sources of supply commodity rates less than sixth class have long been maintained, particularly to Louisville, Cincinnati, Columbus, Buffalo, and related points. The movement from the Virginia cities to the Buffalo-Pittsburgh and Louisville-Cincinnati-Columbus zones is quite heavy; to the remainder of central freight association territory it is comparatively light. The specific and proportional rates from the Virginia cities used in making through rates from points beyond have long been less than the sixth-class rates. So also for many years commodity rates which bear no definite relation to the sixth-class rates have been maintained from the more important

Virginia cities to destinations in trunk line territory. Commodity rates apply generally from the Ohio River and Mississippi River crossings and from southeastern and Mississippi Valley territories.

The reasonableness of increased rates on lumber from those territories to Ohio River crossings was considered in *Rates on Lumber from Southern Points*, 34 I. C. C., 652, and from the same sections to the interior of central freight association territory in *Southeastern Lumber*, 42 I. C. C., 548. Exhibits comparing rates from the Virginia cities with rates from the Mississippi Valley and the southeast to points in the territories of destination appear of record, but in these comparisons the short-line distances from the Virginia cities are generally not used. In the following table the rates sought to be justified from the Virginia cities to eight representative destinations are compared with the present rates from the approximate centers of production on the Illinois Central and Louisville & Nashville railroads, and the rates from Memphis, Tenn., and Cairo, Ill., to substantially equidistant points in the same territories of destination. The lumber-producing sections of the Mississippi Valley and the southeast are grouped into large rate blankets, and the carriers serving them are fairly represented by the Illinois Central and the Louisville & Nashville, respectively. Memphis and Cairo, like the Virginia gateways, are important rehandling points for lumber which originated beyond.

From—	To—	Miles.	Rate.
Virginia cities [1]	Pittsburgh, Pa.	441	23
Cullman, Ala.[2]	Louisville, Ky.	410	21.5
Kentwood, La.[3]	Cairo, Ill.	470	19
Memphis, Tenn.	Cincinnati, Ohio.	487	19.5
Do.	Indianapolis, Ind.	446	23
Cairo, Ill.	Columbus, Ohio.	461	19.5
Virginia cities [1]	Buffalo, N. Y.	575	23
Do.[1]	Columbus, Ohio.	548	23
Do.[1]	Cincinnati, Ohio.	580	23
Do.[1]	Cleveland, Ohio.	566	26
Cullman, Ala.[2]	Cincinnati, Ohio.	524	24.5
Do.[2]	St. Louis, Mo.	522	25
Kentwood, La.[3]	do.	612	24
Memphis, Tenn.	Chicago, Ill.	534	23
Do.	Columbus, Ohio.	603	27.7
Cairo, Ill.	Cleveland, Ohio.	560	21
Virginia cities [1]	Louisville, Ky.	656	23
Do.[1]	Toledo, Ohio.	704	26
Do.[1]	Indianapolis, Ind.	702	32
Cullman, Ala.[2]	Chicago, Ill.	667	29.5
Georgiana, Ala.[2]	Louisville, Ky.	670	24
Kentwood, La.[3]	St. Louis, Mo.	612	24
Do.[3]	Louisville, Ky.	680	24
Cairo, Ill.	Pittsburgh, Pa.	656	24.9

[1] The distance is from Petersburg, which is a centrally located Virginia city.

[2] The pine-producing territory served by the main line of the Louisville & Nashville Railroad extends from Decatur, Ala., to the Gulf and is divided into two groups, group 1 extending from Decatur to and including Montgomery, Ala., and group 2 from Montgomery to the Gulf, including all branch lines. The center of group 1 on this railroad is about Cullman, Ala. *Rates on Lumber from Southern Points, supra.*

[3] The center of production in the large yellow-pine group on the Illinois Central Railroad is Kentwood, La. *Rates on Lumber from Southern Points, supra.*

One of complainants' exhibits shows that commodity rates from shipping points in Delaware, New Jersey, Maryland, Pennsylvania, New York, and that part of Virginia north of the Virginia cities, to many destinations throughout official classification territory average less than 75 per cent of the sixth-class rates from and to the same points.

The substance of the complaints in *Massie & Pierce Lumber Co.* v. *N. & W. Ry. Co.*, *supra*, was a demand by certain producing points not included among the Virginia cities to be given that basis of rates. We found that the conditions were substantially dissimilar and dismissed the complaints. We said that the rates on a specific commodity can not always be measured by the rates on the class to which it belongs, and that the commodity rate of 16 cents then in effect from the Virginia cities to Columbus "has been as low as it might reasonably be during all the period covered by these complaints." During that period the sixth-class rate from the Virginia cities to Columbus was 17 cents. Our conclusion in *North Carolina Pine Asso.* v. *N. & W. Ry. Co.*, *supra*, that the carriers had justified the rate of 17.3 cents on lumber from the Virginia cities to Pittsburgh was not based upon the circumstance that it was also the sixth-class rate, but upon all the evidence of record, including many comparisons with rates from and to other points. Nothing in either of these cases can be construed as holding that sixth-class rates, regardless of level, should apply on lumber from the Virginia cities to Pittsburgh, Columbus, or any other destination. In *Coulbourn* v. *N. Y., P. & N. R. R. Co.*, 47 I. C. C., 54, we prescribed a rate of 9.5 cents on lumber from certain stations on the New York, Philadelphia & Norfolk Railroad in Virginia to Wilmington, Del., and Philadelphia, Pa. The sixth-class rate was 11.6 cents. In *Lumbermen's Asso. of Chicago* v. *A. A. R. R. Co.*, 51 I. C. C., 431, complaint was made by Chicago interests that the commodity rates from St. Louis, Mo., to points in central freight association territory were less than the increased sixth-class rates, whereas the increased sixth-class rates from Chicago to the same destinations applied on lumber. Commodity rates less than sixth class from Chicago were initiated by the Director General, effective October 22, 1918, and the complaint was dismissed.

The lumber rates from the Virginia cities are compared with those from New York, Philadelphia, and Baltimore to nine selected points in central freight association territory west of the Buffalo-Pittsburgh zone, but the witness for defendant who made this comparison admitted that he did not know whether there was any movement thereunder.

Defendants also admit that their comparisons of car-mile earnings on this traffic with the average car-mile earnings on all freight traffic

in the eastern district have little weight. The nine destinations selected by them are all located west of the Buffalo-Pittsburgh zone and in a region to which the movement from the Virginia cities is comparatively light.

Consideration of these various contentions has not convinced us that the increased sixth-class rates from the Virginia cities to the territories of destination should apply on lumber. It may be conceded that the sixth-class rates from the Virginia cities are relatively reasonable as compared, for example, with sixth-class rates from New York and other eastern cities, but it does not follow that such rates would be reasonable to apply on lumber from the Virginia cities. The record indicates that there is no movement of lumber from or through New York or other north Atlantic ports to points in central freight association territory, whereas there is a substantial movement from, and especially through, the Virginia cities to destinations in that territory. It is therefore obvious that in the course of time conditions may arise which would justify an increase or decrease in the class rates from New York to Chicago, without bearing in any way upon the propriety of maintaining or changing the rates applicable on lumber from the Virginia cities. Thus in *The Fifteen Per Cent Case*, *supra*, we permitted an increase of 15 per cent in the sixth-class rates and an increase of 1 cent per 100 pounds in the rates on lumber.

Upon a careful consideration of the record we find that defendants have justified the increased commodity rates, but that they have not justified the increased sixth-class rates in so far as they apply on lumber. No order will be entered at this time, but the defendants will be expected to revise their rates on lumber from and to points now taking sixth-class rates so as to bring them in line with the commodity rates which we have found justified, and to do so within 90 days after service of this report.

Commodity rates independent of the sixth-class rates should be published from the Virginia cities to central freight association territory.

There is no sufficient evidence upon which to base an award of reparation and it will be denied.

THE FOURTH SECTION APPLICATIONS.

The fourth section departures here presented result from the maintenance of lower rates from the Virginia cities to points in central freight association and Buffalo-Pittsburgh territories than from and to intermediate points. We will first consider the departures as to points of origin.

The Chesapeake & Ohio Railway, in accordance with its traditional policy of strict adherence to the fourth section, carries the Virginia-cities basis of rates on lumber as maximum from all intermediate points on its line. The Norfolk & Western maintains the Virginia-cities basis from all points on its line, from Norfolk and Basic to and including Roanoke, but higher than that basis from points on its line west of Roanoke. The Virginian Railway carries the Virginia-cities basis from Norfolk, Suffolk, Alta Vista, Roanoke, and points between Alta Vista and Roanoke, but higher than that basis from other points on its line east of Roanoke, and from many points on its line west of Roanoke. The Richmond, Fredericksburg & Potomac and Washington Southern railways maintain the Virginia-cities basis as maximum from all points on their lines to points in the Buffalo-Pittsburgh and Louisville-Cincinnati-Columbus zones, but higher than that basis from points on their lines north of Richmond to other points in central freight association territory. The Southern Railway participates in the Virginia-cities basis of rates from and via its junctions with the Chesapeake & Ohio and Norfolk & Western and also from West Point, Va., the terminus of its West Point branch, but maintains a higher basis from intermediate points on its line. The Atlantic Coast Line, Seaboard Air Line, and Norfolk Southern railways participate in the Virginia-cities basis from certain of their junctions with the Chesapeake & Ohio and Norfolk & Western via certain other of their junctions with those lines, but maintain a higher basis from intermediate points on their own lines between such junctions.

The Norfolk & Western and Virginian represent that the Chesapeake & Ohio is responsible for the application of the trunk line basis of rates to and from the Virginia cities, and that those rates are subject to other competitive conditions which do not affect the rates to and from the above-described intermediate points on their own respective lines. The other competitive conditions referred to are largely incident to eastbound class traffic to the Virginia cities and not to westbound lumber traffic from the Virginia cities. The Norfolk & Western and Virginian parallel the Chesapeake & Ohio from Norfolk to the Ohio River. No claim is made that the operating conditions along the first two lines are more unfavorable than those along the latter line. From Norfolk to Cincinnati, for example, the distance via the Chesapeake & Ohio is 665 miles; via the Norfolk & Western, 713 miles; via the Virginian to its western terminus at Deepwater, W. Va., and the Chesapeake & Ohio beyond, 679 miles. In *Dewey Bros. Co.* v. *P., C., C. & St. L. Ry. Co.*, 46 I. C. C., 388, we found that the Norfolk & Western had not justified the maintenance

of lower rates on eastbound traffic from central freight association territory to Norfolk and Roanoke than to intermediate points.

In *Conquest & Son* v. *S. A. L. Ry.*, 47 I. C. C., 517, we found that the maintenance of lower rates on lumber from Richmond via Petersburg, and from Petersburg via Richmond, to points in Pennsylvania, Ohio, and Michigan than from Chester, Va., an intermediate point on the Seaboard Air Line and Atlantic Coast Line between Richmond and Petersburg, to the same destinations had not been justified. Our decisions in those cases were based upon findings that the petitioning lines were at no disadvantage in competing for traffic to and from the terminal points, and that the situations which they presented did not constitute special cases for relief within the meaning of the act. In the present case it does not appear that the Norfolk & Western and Virginian are at any substantial disadvantage as compared with the Chesapeake & Ohio in competing for lumber traffic from the Virginia cities.

The record contains no justification for the maintenance of lower rates on lumber from the Virginia cities than from intermediate points on the Richmond, Fredericksburg & Potomac and Washington Southern railways to points in central freight association territory outside the Buffalo-Pittsburgh and Louisville-Cincinnati-Columbus zones. These lines form part of the shortest route from Richmond to all points in the Buffalo-Pittsburgh zone and to many points in the eastern part of the Louisville-Cincinnati-Columbus zone. To the more westerly points in central freight association territory the circuity of their routes is not sufficient to entitle them to any relief.

The Virginia-cities basis of rates applies via the Southern Railway from Orange, Charlottesville, Lynchburg, Burkeville, Richmond, Waverly, and Norfolk, its principal junctions with the Chesapeake & Ohio and Norfolk & Western, and also from West Point, the terminus of its branch of the same name. These rates apply in connection with the Norfolk & Western, Chesapeake & Ohio, Virginian, or Richmond, Fredericksburg & Potomac. The distances from the junctions named via the Southern Railway and the connecting lines named to typical points in central freight association territory are not substantially greater than the distances from the same junctions to the same destinations via the direct connecting lines named. For example, the distance from Norfolk to Cincinnati via the Southern Railway through Danville to Lynchburg and the Norfolk & Western beyond is 782 miles, as compared with 713 miles via the Norfolk & Western direct. No reason appears why lower rates should be maintained from West Point than from intermediate points. On traffic routed via the connecting lines named the situation of all intermediate points on the Southern Railway south

of Orange, and north and east of and including Danville, is substantially the same as that at Chester, the rate basis of which, as regards the fourth section, was considered in *Conquest & Son* v. *S. A. L. Ry.*, *supra.*

The Southern Railway also participates in the Virginia cities basis of rates from all Virginia cities to all points in central freight association territory via its roundabout route through Asheville, N. C., Knoxville, Tenn., and Cincinnati. The higher rates from intermediate points north and south of Danville also apply via this route. No Virginia cities traffic is solicited via this route, shippers are asked to avoid it, and serious consideration has been given to abandoning it as a route for this traffic, but fourth section relief is nevertheless desired in order to keep it open. The distances via this route from Richmond, for example, are considerably more than 15 per cent greater than the distances via the short-line routes to all points in the destination territory. In fact the degree of its circuity is so great as to make its operation of doubtful value to the public and to yield little or no profit to the participating carriers. For example, the distance via this route from Richmond to Cleveland is 1,079 miles; via the short-line route, 566 miles. See *Class and Commodity Rates*, 38 I. C. C., 411, 426. Furthermore, no evidence was presented in support of the reasonableness of the rates from the intermediate points, the explanation made being that the committee of traffic officers of the southern lines, engaged in readjusting rates in accord with the principles announced in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, decided April 13, 1914, had not reached this particular adjustment.

The fourth section situation at local points on the Atlantic Coast Line, Seaboard Air Line, and Norfolk Southern railways intermediate between their junctions with the Chesapeake & Ohio and Norfolk & Western is substantially the same as that at Chester. The record contains no justification for the fourth section departures of these lines at the Virginia cities, nor for those of other lines not specifically referred to above but the applications of which for continued relief were set for hearing.

The fourth section departures as to points of destination occur where the traffic is hauled through a higher-rated zone to reach a lower-rated zone. In some of these cases the distance from the Virginia cities to the intermediate points is no greater than that to the terminal point. This situation is largely the result of applying the trunk line–central freight association adjustment in the construction of rates between the Virginia cities and central freight association territory. For example, the Chesapeake & Ohio and

Toledo & St. Louis Western maintain a through route from the Virginia cities to Toledo via Cincinnati and Marion, Ohio. Toledo is in the 78 per cent zone and Muncie, Ind., an intermediate point, in the 90 per cent zone, although the distance from Richmond, via the route described, to Muncie is approximately the same as the short-line distance to Toledo.

In similar situations relief has been granted the circuitous lines. *Fourth Section Applications 542, et seq.*, 25 I. C. C., 50; *Lumber Rates from Helena, Ark., and Other Points*, 41 I. C. C., 565.

All the applications for authority to continue the maintenance of rates on lumber from the Virginia cities lower than from intermediate points to points in central freight association territory will be denied. If the Southern Railway decides to withdraw from the Virginia-cities traffic via its route through Asheville, N. C., and Knoxville, Tenn., it will be permitted to do so.

All the applications of the direct routes for authority to continue the maintenance of rates on lumber from the Virginia cities to points in central freight association territory lower than to points intermediate thereto will be denied. The circuitous routes will be permitted to meet the rates of the short-line routes and to maintain higher rates to intermediate points in higher-rated groups or zones in central freight association territory provided that the usual percentage relationship between the lower and higher rated groups or zones under the trunk line–central freight association adjustment shall not be changed and the rates at intermediate points in the said higher-rated groups or zones shall in no case exceed the lowest combination.

An appropriate order will be entered.

No. 9190.[1]

MURFREESBORO BOARD OF TRADE ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 4, 1919. Decided December 8, 1919.

Upon complaint that the class and commodity rates to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., from various points are unreasonable, unduly prejudicial, and in violation of the long-and-short-haul clause of section 4 of the act, *Found:*

1. The rates attacked have not been shown to be unreasonable, and the defendants have justified the rates which have been increased since 1910.
2. The competition with the boat lines operating on the Cumberland, Ohio, and Mississippi rivers encountered by the defendants in transporting freight to Nashville is not of such a character as to control or to affect materially the rail rates to Nashville, Tenn.; applications for authority to continue lower rates to Nashville than to intermediate points denied.
3. The present adjustment of rates, under which through rates to the above points are generally made up of the rates to and from Nashville, results in undue prejudice to such points and undue preference of Nashville to the extent that through rates to such points exceed the rates contemporaneously maintained to Nashville plus 75 per cent of the local rates contemporaneously maintained from Nashville.

Wimbish & Ellis for complainants.

R. Walton Moore, *Charles J. Rixey, jr.*, *Frank W. Gwathmey*, and *Nelson W. Proctor* for defendants.

T. M. Henderson for Traffic Bureau of Nashville, intervener.

C. E. Widell for Tennessee Manufacturers' Association, intervener.

R. Walton Moore for Director General of Railroads.

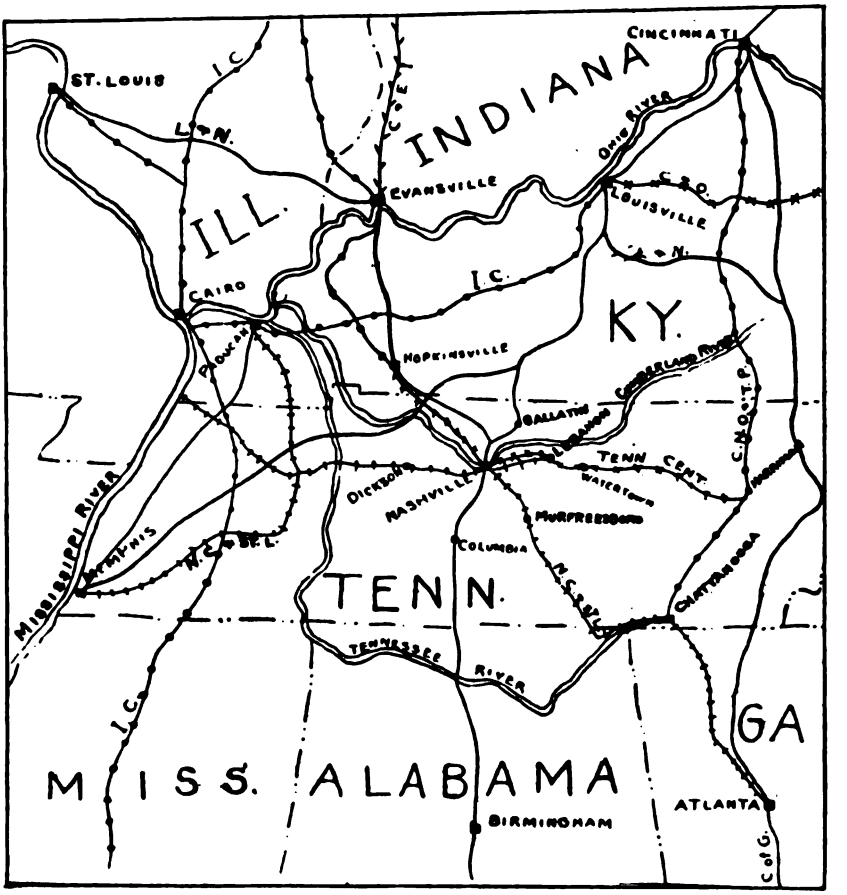
Report of the Commission.

McChord, *Commissioner:*

The complaint in this proceeding alleges that the class and commodity rates to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., from the points of origin hereinafter set forth are unreasonable and as compared to the rates to Nashville,

[1] This report also embraces Fourth Section Applications Nos. 458, 542, 601, 603, 607, 703, 769, 782, 799, 972, 1021, 1024, 1074, 1481, 1548, 1561, 1563, 1573, 1613, 1625, 1771, 1952, 2060, 2173, 2193, 2659, 3596, 3912, 4218, 4219, 4220, 4297, and 4948.

Tenn., are unduly prejudicial to the points named. It is further alleged that certain rates involve departures from the long-and-short-haul clause of section 4 of the act to regulate commerce. Rates which shall not exceed those contemporaneously in effect to Nashville, and reparation, are asked. Intervening petitions were filed by the Traffic Bureau of Nashville and the Tennessee Manufacturers' Association. The former opposes the relief sought, and the latter does



not support or oppose the prayer of complainants. Appropriate fourth section applications were set for hearing with the complaint.

On motion of the complainants we entered an order on September 19, 1918, permitting the filing of a supplemental complaint making the Director General of Railroads a party defendant. On October 4, 1918, answer thereto was filed on behalf of the Director General. Further hearing was not asked.

Murfreesboro is 32 miles southeast of Nashville, on the Nashville, Chattanooga & St. Louis Railway; Columbia is 46 miles southwest

of Nashville, on the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway; Dickson is 42 miles west of Nashville, on the Nashville, Chattanooga & St. Louis Railway; Gallatin is 27 miles northeast of Nashville, on the Louisville & Nashville Railroad; Lebanon is 31 miles east of Nashville, on the Tennessee Central Railroad and Nashville, Chattanooga & St. Louis Railway; and Watertown is 45 miles east of Nashville, on the Tennessee Central Railroad. Nashville is on the Cumberland River, and is served by all of the railroads serving the various complaining points. The accompanying map illustrates the situation. In 1910 the population of these points was: Nashville, 114,899; Murfreesboro, 4,679; Columbia, 5,754; Dickson, 1,850; Gallatin, 2,399; Lebanon, 3,659; and Watertown, 517.

The points of origin involved are the eastern ports; interior eastern cities; Buffalo-Pittsburgh territory; Virginia cities; south Atlantic ports; interior southeastern points; Gulf ports; St. Louis, Mo., Memphis, Tenn., and other lower Mississippi River crossings, and points beyond in western trunk line territory and points in the states of Texas, Oklahoma, and Arkansas; and Ohio River crossings, Cairo, Ill., to Cincinnati, Ohio, inclusive, and points beyond in central freight association and western trunk line territories.

Unless otherwise noted, rates throughout this report will be stated in cents per 100 pounds. The table below shows the first-class rates in effect on June 24, 1918, which illustrate the rate situation, and distances from representative points of origin to Nashville and the complaining points. Under General Order No. 28 of the Director General these rates were increased 25 per cent, effective June 25, 1918.

From—	To Nashville.		To Murfreesboro.		To Columbia.		To Dickson.		To Gallatin.		To Lebanon.		To Watertown.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
New York, N. Y.	954	100	966	125	1,000	125	996	136	946	126	923	118	909	125
Norfolk, Va.	755	92	769	117	861	117	797	128	782	113	724	110	710	117
Savannah, Ga.	548	93	516	118	552	118	590	129	575	119	579	118	593	129
Atlanta, Ga.	288	72	256	72	292	83	330	93	315	93	319	90	333	97
Birmingham, Ala.	208	63	240	84	162	70	250	84	235	84	239	84	253	99
New Orleans, La.	608	90	640	115	577	108	566	119	635	113	639	115	653	126
Memphis, Tenn.	238	59	270	83	264	78	197	65	265	70	269	84	283	95
St. Louis, Mo.	323	70	355	95	369	95	365	85	350	96	354	95	368	106
Chicago, Ill.	447	98	479	107	493	107	441	102	452	108	478	100	492	134
Cairo, Ill.	209	47	241	72	255	72	167	57	236	63	240	72	254	83
Paducah, Ky.	181	47	213	72	227	72	139	53	208	63	212	72	226	83
Evansville, Ind.	157	47	189	72	203	72	193	79	163	63	188	72	202	83
Louisville, Ky.	186	47	218	72	232	72	221	80	159	55	217	72	231	83
Cincinnati, Ohio.	300	62	332	87	346	87	335	88	273	78	331	87	345	98

The first-class rates in effect on June 24, 1918, from Nashville to the complaining points were as follows: Murfreesboro, 25 cents; Columbia, 25 cents; Dickson, 36 cents; Gallatin, 26 cents; Lebanon, 25 cents; and to Watertown, 36 cents. These rates also were in-

creased under General Order No. 28. The through rates to the complaining points are generally based on the Nashville combination. The exceptions to this rule are usually due to the fact that the complaining points are intermediate to Nashville, in some instances, particularly as to Murfreesboro, Columbia, and Gallatin, and the application of the mileage scales results in lower rates than the combination on Nashville. In many instances the rates to Dickson are less than the combination on Nashville for the reason that the rates from points north of the Ohio and Missouri rivers are based upon Paducah.

Some of the rates under attack were increased on January 1, 1916, in connection with the revision of rates following our report in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 313. In certain instances the rates to some of the intermediate points, particularly Gallatin, were not changed at the time the rates to Nashville were increased. The rates to points beyond Nashville were generally increased to the same extent as those to Nashville. In this readjustment the southern classification was made applicable in connection with the rates from eastern and interior eastern cities in lieu of the official classification, which also resulted in increased charges in some cases.

While it is alleged that the rates are unreasonable, the main contention of complainants is that the present rate adjustment is in violation of sections 3 and 4 of the act to regulate commerce, and on brief complainants practically abandoned the contention that the rates are unreasonable in and of themselves. Considerable evidence was introduced by the defendants for the purpose of showing that the rates to the complaining points are inherently reasonable. The rates attacked are compared with rates from the points of origin involved to other points in the southeast, also with rates in other sections of the country, some of which were prescribed by us. Defendants also refer to increased costs of operation.

The principal justification offered by the carriers for the maintenance of lower rates to Nashville than to intermediate points is that the rates are depressed by competition between the rail lines serving that point and by competition, actual or potential, with the boat lines operating on the Cumberland, Ohio, and Mississippi rivers.

It is asserted that the rail carriers serving Nashville are in active competition with each other for traffic to that point, which competition influences the rates; and that this situation does not exist at the complaining points. The record shows that the Tennessee Central is not a factor in making rates to Nashville, having met the rates in effect when it commenced operation in 1902, and since that time it has exercised little, if any, influence on the rates because of its light traffic, oper-

ating disadvantages, and financial condition. The Nashville, Chattanooga & St. Louis is controlled through stock ownership by the Louisville & Nashville. In *Financial Relations, etc., L. & N. R. R. Co.*, 33 I. C. C., 168, we found that the official record of these carriers clearly established that the purpose of control of the former by the latter was primarily to restrict competition and to maintain rates. We therefore find that the competition between the rail carriers serving Nashville is not of such a nature as to affect the measure of the rates to that point, and in determining whether the rates to Nashville are depressed we must consider the competition with the river lines only.

A very comprehensive record has been presented upon the question of Cumberland River competition and its effect upon rates to Nashville. The Louisville & Nashville commenced operation from Louisville to Nashville in November, 1859. In 1857, 33 steamboats were engaged in transporting freight between Ohio and Mississippi river cities and Nashville, of which 6 were through boats operated from Pittsburgh, 7 from Cincinnati, 3 from Louisville, 2 from St. Louis, 4 from Memphis, 5 from New Orleans, and 6 from Paducah. in 1870, 15 steamboats transported freight to Nashville, 4 of which operated from Cairo, 3 from Cincinnati, 4 from Pittsburgh, and 1 from Evansville, and the points from which the remaining 3 boats operated were not shown. At the time of hearing, in March, 1917, 1 boat of 300-tons capacity operated weekly from Paducah to Nashville. At the same time there was a daily boat service from Cincinnati to Louisville, service twice a week from Louisville to Evansville, a somewhat irregular service from Evansville to Paducah, daily service from Cairo to Paducah, service twice a week from St. Louis and Memphis to Cairo, and regular boat and barge service between St. Louis and New Orleans, with stop at Cairo.

The following table shows the class rates published by the Louisville & Nashville from Louisville to Nashville from 1865 to and including January 1, 1916:

Date.	1	2	3	4	5	6	A	B	C	D
Dec. 31, 1865	75	65	50	.....	.....	.....	.....	.....	.....	.....
Aug. 1, 1869	70	60	45	35	.....	.....	.....	.....	.....	.....
July 1, 1872	55	45	42	30	.....	.....	.....	.....	.....	.....
Apr. 1, 1876	40	35	30	15	12	.....	.....	15	12	12
Aug. 12, 1878[1]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Nov. 4, 1878	25	20	17	14	13	.....	.....	17	13	13
Dec. 3, 1879	35	28	24	19	15	15	15	19	15	15
Apr. 26, 1882	38	33	28	23	18	18	15	19	15	15
June 1, 1882	38	33	28	23	15	15	15	19	13	12
July 17, 1882	38	33	28	23	15	15	15	19	13	10
June 25 1883	38	33	28	23	18	15	15	19	13	10
Mar. 15, 1886	38	33	28	23	18	15	15	19	11	10
Apr. 16, 1891	38	33	28	23	18	15	15	15	11	10
Aug. 1, 1908	38	33	28	23	18	15	15	18	11	10
Jan. 1, 1916	47	38	31	28	22	20	15	20	11	10

[1] A first-class rate of 20 cents was established on this date, but the rates for the lower classes were not given.

Specific instances are given by defendants of shipments of particular articles from competitive points to Nashville via the river lines. It is stated that the information in the possession of the defendants with respect to such shipments is not complete, and that recently the defendants have not attempted to check the movement of traffic via the river lines. The record shows conclusively that for many years after the Louisville & Nashville commenced operation to Nashville the competition with the river lines was very keen, and the witnesses testified at great length as to the various steps taken by the Louisville & Nashville to meet this competition. As hereinbefore shown, the first-class rate from Louisville to Nashville was reduced from 75 cents in 1865 to 20 cents in 1878 since which time the rate was gradually increased to 38 cents in 1882 and to 47 cents in 1916.

Complainants admit that the competition with the river lines influenced the rates to Nashville for some time, but contend that the question before us for determination is whether the present rates are affected by this competition. In support of this contention complainants cite *Commercial Club of Duluth* v. *B. & O. R. R. Co.*, 27 I. C. C., 639, wherein we stated at page 652 that—

> We not infrequently inquire into the origin and history of rates and of rate relations in order properly to interpret and to understand their significance; but when dealing with a rate or a relation of rates now in existence, and which is complained of as being either unreasonable or unduly discriminatory, we can neither justify nor condemn it on the basis of its origin or of the conditions surrounding the traffic in the past, but only on the basis of its present effect in the light of present conditions.

Complainants call attention to the fact that defendants refer specifically to but few shipments from competitive points to Nashville via the river lines since 1900. The defendants refer to 74 shipments of manufactured articles in 1901, 1905, and 1907 to 1913, inclusive, from competitive points to Nashville, and to shipments of grain in 1905 and 1915. Many of these shipments covered small quantities of freight. During 1911 and 1912 there was a considerable movement of merchandise and other manufactured articles which originated at various northern and eastern points. Complainants assert that this movement was artificially stimulated, as at that time the case of *Atlanta Freight Bureau* v. *N., C. & St. L. Ry.*, 29 I. C. C., 476, in which the Nashville Traffic Bureau intervened, was before us. Complainants' assertion seems to be borne out by the fact that, as shown by the annual reports of the chief of engineers, United States army, hereinafter referred to, the movement of merchandise and manufactured articles via the river lines greatly decreased.

The following table is taken from the annual report of the chief of engineers, United States army, for the year 1916, and shows the ton-

nage transported via the Cumberland River below Nashville for the calendar years 1906 to 1915, inclusive:

Year.	Total tonnage.	Farm products.	Forest products.	Merchandise, including flour and meal.	Fertilizer.	Sand and gravel.	Miscellaneous, including coal, cement, iron, machinery, etc.	Rafted products.
1906	223,809	29,185	159,346	2,000	.....	31,680	.....	1,698
1907	300,810	40,928	227,189	20,600	1,500	1,800	2,860	5,943
1908	259,734	24,176	217,272	6,300	.....	8,520	1,778	1,688
1909	193,118	27,202	129,468	18,113	82	16,414	177	1,662
1910	327,757	56,365	168,909	42,513	.....	45,000	9,770	5,200
1911	223,278	23,264	145,334	7,159	700	40,916	2,305	3,600
1912	176,659	21,431	59,373	10,800	.....	26,780	1,542	56,733
1913	165,123	16,123	131,024	2,705	1,100	11,250	1,026	895
1914	153,458	6,151	99,266	4,140	851	38,976	1,337	2,737
1915	126,949	10,250	92,723	3,904	421	15,237	1,781	2,633

Of the traffic handled in the last year shown in the above table, 85,651 tons consisted of railroad ties, 9,707 tons of forest products other than railroad ties, 15,237 tons of sand and gravel. No figures are given showing separately the tonnage transported to or from local points and that transported to or from points also served by rail lines.

In an exhibit filed by the Louisville & Nashville it is stated that in the territory adjacent to the Cumberland River below Nashville large quantities of agricultural products, live stock, poultry, and eggs are produced, and that from Cumberland City, Tenn., to Eddyville, Ky., a distance of about 60 miles, the average distance across country to the nearest railroad is about 20 miles. It is also stated that in the territory adjacent to the river from Nashville to Burnside, Ky., a distance of 325 miles, large quantities of forest products are produced, and the movement of this traffic is absolutely dependent upon the river, as but two points are also reached by rail.

Improvements in the form of a series of locks and dams have been made in recent years in the Cumberland River channel, and prior to the hearing in 1917 the river below Nashville was navigable for boats drawing 6 feet or less from 8 to 10 months during the year. Further improvements of the same nature were then under way, and when completed the river will be navigable for boats drawing 6 feet or less during the entire year between its junction with the Ohio and Nashville.

The effect of the Cumberland River competition upon rates to Nashville has been under consideration by us in the following cases, and the conclusions reached in respect thereto in the various cases have not been altogether harmonious: *Phillips, Bailey & Co.* v. *Louisville & Nashville R. R. Co.*, 8 I. C. C., 93; *Payne-Gardner Co.* v.

Louisville & Nashville R. R. Co., 13 I. C. C., 638; *Rates on Sugar*, 31 I. C. C., 495; *Chamber of Commerce of Chattanooga* v. *S. Ry. Co.*, 10 I. C. C., 111; *Duncan & Co.* v. *N., C. & St. L. Ry. Co.*, 16 I. C. C., 590, 21 I. C. C., 186, and 35 I. C. C., 477; *Receivers & Shippers Asso.* v. *C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440; *Columbia Grocery Co.* v. *L. & N. R. R. Co.*, 18 I. C. C., 502; and *Atlanta Freight Bureau* v. *N., C. & St. L. Ry.*, 29 I. C. C., 476. Without discussing these cases in detail, it is sufficient to state that in some we held that the river competition influenced the rates and in others we held to the contrary. This question has been more fully covered in this proceeding than in those referred to, and the conclusions therein reached need not be considered here.

Before we can properly authorize the defendants to maintain lower rates to Nashville than to intermediate points it must be clearly shown that the circumstances and conditions surrounding transportation to Nashville are substantially dissimilar to those surrounding transportation to intermediate points. The testimony relied upon by defendants to support their allegation that the lower Nashville rates are necessary because of active and compelling competition with the river lines is not convincing. As stated above, defendants refer to some shipments of grain and manufactured articles from competitive points to Nashville via the river lines since 1900, but these shipments are comparatively few in number, and there is nothing in the record to indicate that this route is used regularly for the transportation of freight from competitive points in appreciable quantities. The competition with the river lines is almost entirely potential, and we are of the opinion that the competition disclosed by the record does not justify fourth section relief sought.

At the present time through rates to points beyond Nashville are generally made up of the rates to and from Nashville, so that Nashville merchants are usually enabled to compete for business at the complaining points on the same basis from a transportation standpoint as merchants located there, and when complainants undertake to compete with Nashville merchants at other competitive points they are at a serious disadvantage, as the combinations on the complaining points greatly exceed the combinations on Nashville. The defendants contend that the rates to Nashville are depressed by competition with the river lines, and that therefore the present basis of constructing through rates to points beyond Nashville is proper. We have already found that there is no compelling competition which justifies lower rates to Nashville than to intermediate points. Therefore in using the combination in constructing through rates to points beyond Nashville the defendants are applying the basing-point system, which has been repeatedly condemned by us. It appears from

the record that it has been the purpose of defendants to maintain rates to Nashville which will enable that point to compete with other large commercial centers in the same general territory. The defendants can not lawfully extend such a basis of rates to Nashville, and at the same time ignore the rates to other points in the immediate vicinity.

Upon the facts of record we are of the opinion and find that the rates attacked have not been shown to be unreasonable, and that the defendants have justified the rates which have been increased since 1910; that the competition with the boat lines operating on the Cumberland, Ohio, and Mississippi rivers encountered by defendants in transporting freight to Nashville is not of such a character as to control or to affect materially the rail rates to Nashville, and the applications for authority to continue lower rates to Nashville than to intermediate points should be denied; that the present rates to the complaining points to which traffic moves through Nashville subjects such points to undue prejudice and unduly prefers Nashville to the extent that the through rates exceed the rates contemporaneously maintained to Nashville plus 75 per cent of the local rates contemporaneously maintained from Nashville to the complaining points.

The establishment of the percentage relation is not to be held as an approval by us of the existing local rates from Nashville to the complaining points as being reasonable to apply as factors of through rates even on the basis proposed. The complainants have established their right to relief from the undue prejudice. The relief granted is considered on the average, and in the absence of sufficient evidence to enable us to prescribe just and reasonable through rates in each instance.

There is no showing that complainants have been damaged because of the unlawful rate adjustment, and reparation is therefore denied.

Appropriate orders will be entered.

No. 10528.

KICKAPOO SAND & GRAVEL COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted August 5, 1919. Decided December 18, 1919.

Rates on sand and gravel, in carloads, from Kickapoo, Ind., to Chicago, Ill., and points in the Chicago switching district, found to have been and to be unreasonable and unduly prejudicial. Reparation awarded.

Charles E. Heckler and *Clarence B. Cardy* for complainant.
Homer T. Dick and *K. L. Richmond* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, *Commissioner:*

The complainant is a corporation engaged in the production and sale of sand and gravel at Kickapoo, Ind., a local point on the Chicago & Eastern Illinois Railroad, 113 miles south of Chicago, Ill. By complaint, filed March 24, 1919, it alleges that the rates of defendants for the transportation of these commodities, in carloads, from Kickapoo to Chicago and to points within the Chicago switching district were and are unreasonable, unjustly discriminatory, and unduly prejudicial. The complaint asks for the establishment of rates that are free from these alleged violations of the law and for reparation on all shipments moving since April 22, 1918.

The average distances from all points in the inner zone, Algonquin and other points in northern Illinois, and the outer zone, Rockford, Ill., Janesville, and other points in Wisconsin, to Chicago, are 50 and 93 miles, respectively. Group rates apply from these zones to Chicago, the outer zone taking a differential of 5 cents per net ton over the rates in effect from the inner zone on local deliveries at Chicago, fixed in *Sand & Gravel Rates from Wisconsin Points to Chicago, Ill.*, 34 I. C. C., 467.

Complainant commenced shipping from Kickapoo in the spring of 1909. The rates from Kickapoo were established by the Chicago & Eastern Illinois Railroad in 1907 and were made to approximate the charge as then applied for connecting-line deliveries on shipments from the inner zone. This relationship continued until July, 1917, with a short interruption in 1914, when, following our decision in

The Five Per Cent Case, 31 I. C. C., 351, 32 I. C. C., 325, the rates from Kickapoo were increased. Shortly after December, 1914, they were restored to their former basis because of the inability of the carriers serving the inner zone to secure a like increase of intrastate rates. An order of the Illinois Public Utilities Commission, making certain reductions in the charges for connecting-line deliveries from the points in the inner zone, was sustained by the supreme court of that state and became effective July, 1917. Finally all semblance of relationship in these rates was destroyed in 1918, following an order of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and General Order No. 28, effective June 25, 1918, of the Director General of Railroads.

The following table, compiled from exhibits of record, shows the short-line mileage and rates per ton prior and subsequent to July 10, 1917, from Kickapoo, Ginger Hill, Ind., and representative points of origin in the inner and outer zones for local deliveries and joint and belt line industrial deliveries in the Chicago switching district:

Sand and gravel rates per ton.

To Chicago switching district from—	Miles.	Local deliveries.			Joint and belt lines' industrial deliveries.			
		Prior to April, 1919.	April and May, 1918.	June 25, 1918.	Prior to July 10, 1917.	July 10, 1917.	April and May, 1918.	June 25, 1918.
Kickapoo, Ind.	113	40	50	70	50	50	60	80
Ginger Hill, Ind.	93	[1] 39	40	60	50	50	50	60
Algonquin, Ill.[2]	47	30	30	50	[3] 50	[4] 42	[4] 42	[4] 62
Janesville, Wis.[5]	91	35	35	[6] 55	[3] 55	[3] 55	[3] 55	[3] 75

[1] Rate originally established for movement by way of Schneider, Ind., a distance of 121 miles.
[2] Inner-zone point.
[3] Based on local rates plus 1 cent per 100 pounds for industrial deliveries.
[4] Estimated rate on average carload of 95,000 pounds, based on rate of 1.5 cents per 100 pounds plus $4 per car of 60,000 pounds plus 10 cents per ton for excess over 60,000 pounds, as established by order of Illinois Public Utilities Commission. Order sustained in *State Public Utilities Commission* v. *Chicago & N. W. Ry. Co.*, 279 Ill., 110; 116 N. E., 620.
[5] Outer-zone point.
[6] Increased to 60 cents on June 25, 1918, and reduced to 55 cents, effective September 7, 1918, in compliance with decision in *Sand and Gravel Rates from Wisconsin Points to Chicago, Ill.*, 34 I. C. C., 467.

From an examination of the above table it will be seen that whereas Kickapoo formerly had the same rates for joint and belt line industrial deliveries as Algonquin, there is at present a difference in favor of Algonquin of 18 cents; whereas Ginger Hill formerly was but 1 cent under Kickapoo for local deliveries it now has an advantage of 10 cents under Kickapoo, which advantage extends to deliveries on the Chicago & Eastern Illinois itself; and that while both Kickapoo and Ginger Hill were formerly on the same basis for joint deliveries, Ginger Hill has now an advantage of 20 cents under Kickapoo and 2 cents under Algonquin.

The complainant's real interest is to secure a restoration of the relationship in the rates formerly existing between Kickapoo on the

one hand and Ginger Hill and the inner zone on the other, and it is not concerned whether this be brought about by an increase in the rates from the inner zone and Ginger Hill or by a reduction in the Kickapoo rates.

Complainant ordinarily sells the major portion of its output in the Chicago switching district. By reason of rates between these points with which complainant competes, it has been shut out of this market entirely.

In addition to exhibits of comparative rates, which need not be detailed, defendants, to confirm their assertion that rates from the competitive points are unduly low, show they have made several unsuccessful efforts to increase the rates from the inner-zone points, which rates not only have not been increased by either 5 per cent or by 15 per cent allowed on the interstate rates, but, on the contrary, the joint rates from the inner-zone points have been reduced. The rates from the outer zone have been correspondingly held down because of the 5-cent differential established by us in *Sand and Gravel Rates from Wisconsin Points to Chicago, Ill., supra.* They cite our decision in the above case and in *Sand and Gravel Rates from Janesville, Wis.*, 24 I. C. C., 249, to show that we have recognized the low measure of these rates.

The rate on sand and gravel from the outer zone to Chicago is undoubtedly low, but the commodities to which it applies are of the lowest class in commerce. A differential of more than one-fourth of a cent per 100 pounds would render it impossible for the shippers in the outer zone to compete in the Chicago market with the shippers from the inner zone.

The elimination of discrimination in the increases permitted by us could have been easily accomplished, but, nevertheless, the local rate from Kickapoo was increased 25 per cent and the corresponding rate from Ginger Hill but little more than 2½ per cent, while the joint rate from Kickapoo was increased 20 per cent with no increase whatsoever in the joint rate from Ginger Hill. As a direct consequence of the undue prejudice created thereby, one of two substantially similar competing points has been eliminated from the common market of consumption.

A report of an examiner was served upon counsel for the parties in this case. No exceptions thereto have been taken. The examiner recommended that the Commission find the rates assailed to have been and to be relatively unreasonable and unduly prejudicial to the extent they exceeded or exceed the rates contemporaneously in effect from Ginger Hill, and by more than 5 cents per ton the rates contemporaneously applicable from inner-zone points, to Chicago and points in the Chicago switching district; that complainant paid and bore the transportation charges on the shipments made by it, and

has been damaged to the extent the local and joint rates collected exceeded 40 and 50 cents per ton, respectively, on shipments made between April 22, 1918, and June 25, 1918, and 60 and 70 cents per ton, respectively, thereafter. Since the submission of the case the complainants have filed a statement, certified to by the defendants, of the shipments made and the amounts of reparation due on this basis.

Upon consideration of the record we affirm the findings of the examiner except that we find the rates to have been unreasonable and unduly prejudicial, during the period from April 22, 1918, to June 25, 1918, to the extent that they exceeded the rates in effect from Ginger Hill; thereafter to the extent that the rate from Kickapoo to Chicago and points in the Chicago switching district for local delivery exceeded the corresponding rate contemporaneously in effect from Ginger Hill.

The Director General did not avail himself of the increase provided by General Order No. 28 with respect to the rate for joint and belt line deliveries from Ginger Hill, thereby unduly preferring that point. Therefore, as previously shown, the rate after June 25, 1918, from Ginger Hill was 2 cents under that from the inner zone. We find that any rate from Kickapoo to Chicago and points in the Chicago switching district in excess of 70 cents per ton for joint and belt line deliveries was, is, and for the future will be, unreasonable and unduly prejudicial. As previously indicated, complainant is entitled to reparation on these bases.

The statement of shipments filed to accord with the examiner's findings prior to our decision herein may require modification. Upon compliance with rule V of the Rules of Practice an order of reparation will be issued for the amount so found to be due.

An appropriate order will be entered.

No. 10185.[1]

ORANGE RICE MILL COMPANY

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 14, 1919. Decided December 8, 1919.

Rate of 22 cents per 100 pounds on blackstrap molasses, in tank-car loads, from certain points in Louisiana to Orange and Beaumont, Tex., and present increased rates from and to the same points, found to have been and to be unreasonable to the extent that they exceeded or may exceed the rates contemporaneously applicable from Shreveport, La., to points in Texas for like distances. Relationship of rates prescribed and reparation awarded.

H. S. L'Hommedieu for complainant in No. 10185, and intervener in No. 10241.

Charles A. Bland for complainant in No. 10241, and intervener in No. 10185.

H. M. Garwood for all defendants.

Baker, Botts, Parker, and *Garwood* for defendants in No. 10241.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases present similar issues, and will be disposed of in one report.

The complainant in No. 10185 is a corporation engaged in the manufacture of stock food at Orange, Tex. By complaint filed March 19, 1918, it alleges that the rate of 22 cents per 100 pounds charged on four carloads of domestic blackstrap molasses, in tank cars, shipped in August and September, 1916, and March, 1917, from Lockport, Southdown, and Matthews, La., to Orange was unreasonable to the extent that it exceeded 15.5 cents per 100 pounds; and asks reparation and the establishment of a rate for the future not in excess of the rate prescribed for an equal distance in *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 48 I. C. C., 312, hereinafter called the *Shreveport Case.* By supplemental complaint filed prior to the hearing the Director General of Railroads was made a

[1] This report also embraces No. 10241, Beaumont Chamber of Commerce *v.* Director General, Beaumont, Sour Lake & Western Railway Company, et al.

party defendant. The Beaumont, Tex., Chamber of Commerce, interested in maintaining equal rates to Orange and Beaumont, intervened at the hearing, but assailed no rate and asked no relief.

By its complaint in No. 10241, filed May 28, 1918, as amended, the Beaumont Chamber of Commerce, on behalf of Jackson E. Josey and Rudolph C. Miller, copartners, engaged in the manufacture of stock food at Beaumont, Tex., under the firm name of Josey Miller Company, and hereinafter called complainants, alleges that the rate of 22 cents per 100 pounds charged on certain tank-car loads of blackstrap molasses shipped during January, February, March, and April, 1917, from named points in Louisiana to Beaumont was, and that the present rate is, unreasonable. We are asked to award reparation and to establish a reasonable rate for the future. The Orange, Tex., Chamber of Commerce, interested in maintaining a rate equality between that point and Beaumont, intervened at the hearing. Rates are stated in this report in cents per 100 pounds and, unless otherwise noted, are those in effect prior to June 25, 1918, upon which date they were increased 25 per cent pursuant to General Order No. 28 issued by the Director General of Railroads.

The shipments in No. 10185 moved over defendant's lines, 225 miles from Lockport, 222 miles from Matthews, and 215 miles from Southdown, an average of 221 miles. They aggregated 414,640 pounds, and charges were collected in the sum of $912.21, based on a commodity rate of 22 cents, minimum 24,000 pounds.

The complainant in that case shows that the 22-cent rate applied on table molasses, which has a substantially higher value than blackstrap molasses, a low-grade refuse product shipped in tank cars, the average weight of the shipments having been 103,660 pounds. In the manufacture of stock food at complainant's plant the blackstrap is mixed with rice bran, once a waste by-product, the mixture containing about 24 per cent blackstrap. The rate assailed is compared with relatively lower rates on sugar, green coffee, waste paper, roofing pitch, and brick from New Orleans, La., to Texas points; but it is apparently conceded that most, if not all, of the cited rates are influenced by competition with ocean rates, whereas blackstrap does not move by water between Gulf points and rates thereon are not similarly influenced.

The rates assailed were and are the same as the rates from New Orleans. Complainant also cited, for comparative purposes, the following rates which were contemporaneously in effect from New Orleans: 10 cents on imported blackstrap molasses, agreed or declared value not exceeding 8 cents per gallon, to Memphis, Tenn., 395 miles; 13 cents to Cairo, Ill., 554 miles; and 15 cents to St. Louis, Mo., 700 miles. It also pointed out that a rate of 18.5 cents applied

from the points of origin to Orange on blackstrap the "declared value of which does not exceed 8 cents per gallon;" and that the rates on imported blackstrap from New Orleans to Orange were 16.25 and 13.75 cents, the latter applicable when the value did not exceed 8 cents per gallon. The two rates last named were canceled June 25, 1918. Complainant's witness testified that at the time of movement an intrastate rate of 10 cents applied on the commodity shipped from New Orleans to St. Charles, La., 219 miles. Orange is but 38 miles farther distant on the same line.

Complainant relies principally upon the rates established in the *Shreveport Case*, *supra*, wherein we prescribed, for distances over 200 and not exceeding 250 miles from Shreveport, La., to Texas points, and without reference to the value of the blackstrap, a rate of 15.5 cents, minimum 36,000 pounds, for single-line hauls and 16.5 cents for joint-line hauls. The shipments moved entirely over lines controlled by the Southern Pacific Company. Complainant contends that there are no transportation reasons for the application of higher rates than are contemporaneously in effect from other Louisiana points to Orange.

At the hearing defendants took the position that the rate of 18.5 cents published to both Orange and Beaumont on blackstrap the "declared value of which does not exceed 8 cents per gallon" was legally applicable to the shipments referred to herein. The rate so limited was published without our authority and, under the second Cummins amendment, the limitation was void, and the rate, while technically legally applicable, was unlawful. *The Cummins Amendment*, 33 I. C. C., 682. *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510. *Williams Co.* v. *Hartford & New York Transportation Co.*, 48 I. C. C., 269. Commission's Circular, *In the Matter of Rates Dependent Upon the Declared or Released Value of Property*, of April 26, 1918.

Defendants contend that the scale prescribed in the *Shreveport Case*, *supra*, is too low, and oppose its extension to originating points in eastern and southern Louisiana, more particularly perhaps to those points long grouped with New Orleans and including the points from which complainant's shipments moved. While those shipments averaged approximately 52 tons, defendants' witness testified that the average loading from Louisiana to Texas has been 46 tons; further, that the empty return haul of the tank cars is 100 per cent, as against a ratio of 85 per cent loaded movement to 15 per cent empty movement of commodities in box cars on the Southern Pacific lines during a test period of one month. Class rates and rates on several commodities, including blackstrap, from New Orleans to Texas points are exhibited for comparison, and class rates prescribed by us

from Kansas City, Mo., to Albuquerque, N. Mex., and El Paso, Tex., are contrasted with the lower class rates prescribed for application from El Paso eastbound to Shreveport and applying also to Beaumont and Orange. The reductions which would follow the application of the Shreveport scale are pointed out. Gross ton-mile earnings on scrap iron, canned goods, soap, roofing paper, and bones, for distances ranging between 250 and 300 miles, are shown as substantially higher in many cases than on blackstrap. At the rate of 22 cents the four shipments in No. 10185 averaged approximately 1.99 cents per ton-mile and $1.03 per car-mile; at the indicated general average of 46 tons the car-mile earnings would approximate 91.6 cents. The 15.5-cent rate sought would have yielded ton-mile earnings of 1.4 cents, and car-mile earnings, based on 46 tons, slightly less than 64.5 cents. Based upon an indicated average tare weight of 24.3 tons for the tank car, the gross ton-mile and car-mile revenues would not be far from two-thirds of those indicated.

The 11 shipments upon which reparation is sought in No. 10241 aggregated 1,037,453 pounds and moved over the defendant carriers' lines from Lafayette, Harvey, Sterling, Caneland, Enterprise, and New Orleans, La., to Beaumont, the hauls apparently varying from 134 miles from Lafayette to 281 miles from New Orleans. Charges were collected in the sum of $2,282.39, at the rate of 22 cents. The evidence in this case is substantially similar to that in No. 10185.

Upon all the facts of record we find that the rates legally applicable were, and that the present rates are, and for the future will be, unreasonable to the extent that they respectively exceeded or may exceed the rates contemporaneously applicable on the same commodity from Shreveport to points in Texas for like distances; that complainants made shipments as described and paid and bore the charges thereon; that they were respectively damaged thereby in the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present records, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of orders awarding reparation.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting in part:

I concur in the findings of the majority except in so far as the 18.5-cent rate is found to be unlawful under the second Cummins

amendment. It seems to me that the better construction of the two Cummins amendments would be that the plain and unmistakable purpose of the first was to make unlawful and void, except as otherwise provided therein, all attempted limitations by tariff or otherwise of liability for loss, damage, or injury, but that neither amendment made unlawful the rate to which such a void limitation was attached.

No. 10334.[1]

CARNATION MILK PRODUCTS COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted October 20, 1919. Decided December 11, 1919.

Rates for the transportation between July 21, 1915, and July 19, 1916, of carload shipments of canned milk (condensed) from condensing plants in the state of Washington to various points in eleven other states not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

E. S. DePass for complainant.

O. W. Dynes for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

AITCHISON, *Chairman:*

The complainant herein attacks the rates applied on various shipments of canned milk (condensed) from points in the state of Washington to points in different states as unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously applicable on canned goods, and prays for an award of reparation based on the difference between the two bases of rates.

The original complaint deals with forty-one shipments made by complainant between July 21, 1915, and February 26, 1916, from Chehalis, Monroe, and Mount Vernon to points in the states of Texas, Oklahoma, Wyoming, Colorado, Nebraska, Missouri, Pennsylvania, New York, and Massachusetts.

[1] This report also embraces Sub-No. 1, Same *v.* Director General and Great Northern Railway Company, and Sub-No. 2, Same *v.* Director General, Northern Pacific Railway Company, et al.

Prior to July 21, 1915, the rate on both canned milk (condensed) and other canned goods (hereinafter referred to as canned goods) between the points in question was 85 cents per 100 pounds, minimum weight 40,000 pounds. On that date an additional rate of 62½ cents, minimum weight 60,000 pounds, was established on canned goods, but not on canned milk. On February 26, 1916, the latter rate and minimum were established also on canned milk. These rates were to be applied alternatively, whichever made the lower charges.

Sub-No. 1 covers four shipments forwarded between July 21, 1915, and March 1, 1916, from Stanwood and Monroe, to points in Montana on the Great Northern Railway as follows:

From—	To—	Rate applied.
		Cents.
Stanwood	Great Falls	70
Monroe	Billings	75
Do	Glasgow	85
Stanwood	Libby	63

The facts with reference to the rates applied on these shipments are the same as those covered by the original complaint except that the additional rate of 62½ cents, minimum 60,000 pounds, on canned milk was not established until March 1, 1916.

Sub-No. 2 covers one shipment forwarded from Kent to Tucson, Ariz., on June 25, 1916, on which a rate of 85 cents was applied. The alternative rate of 62½ cents, minimum 60,000 pounds, on canned goods was not established between these points until April 29, 1916. It was made to apply on canned milk on July 19, 1916.

At the hearing the defendants questioned whether, as required by our rule, formal complaint was filed as to certain of the shipments within six months after the carriers declined to submit the case for adjustment on our informal docket. It appears from the testimony of the complainant and a check of our records, that the communications referred to by the defendants as having been written more than six months prior to the filing of the formal complaint, in which the carriers declined to make application on the informal docket, referred to other shipments, and that formal complaint as to all the shipments here in question was filed in accordance with our rules.

Complainant states that certain claims of a similar nature have been paid as a result of orders issued by us on the special docket. One of these claims specifically covered by the testimony, by way of illustration, arose in connection with a shipment of canned milk form Chilton, Wis., to Wichita, Kans., on March 14, 1914. A commodity rate of 51 cents per 100 pounds was in effect from Chilton

and other Wisconsin condensing points to Wichita and other points in Trans-Missouri territory applicable on canned goods, classified fifth class in the western classification. Canned milk, although classified fifth class, was not specifically included in the general descriptive term "canned goods" and accordingly the lower commodity rate was not applicable. Later, when the commodity rate was made to apply on canned milk, the carriers made the application for authority to refund.

The defense of the carriers in the present proceedings is that the reductions in the rates on canned milk and canned goods were made under substantially dissimilar circumstances and conditions. They say, and this record substantiates the claim, that the reduction as to canned goods was made to meet the competition of the American-Hawaiian Steamship line, operating between the east and west coasts through the Panama Canal, and via the Sunset Central route, comprising the Southern Pacific lines to Galveston and the steamship line beyond, which affected the rates to the interior points also. The alternative rate on canned milk was established later, at the request of the shippers, who desired to have continued the parity of rates between canned goods and canned milk that existed under the former rate and minimum. It is also represented by shippers that unless the alternative rate were established, canned milk would also move via the competing water lines. It is testified on behalf of the complainant in this respect that owing to slides in the Panama Canal and the withdrawal of boats from the coast-to-coast traffic into more lucrative war employment, there were practically no shipments of canned goods by water between the Pacific and Atlantic seaports during the period the shipments in question moved, and that canned milk as well as canned goods would have been offered to the boat lines for transportation during this period had the water service been available.

The carriers seek to differentiate this claim from the claims settled on our special docket, to which reference has been made, on the same general grounds of water competition as that outlined above. They contend that the refund on the Wisconsin shipments was made only to a reasonable normal basis, whereas the refund here desired is to a subnormal water-competitive basis, which the carriers were required to meet as to canned goods but not as to canned milk.

It appears from the record that canned milk and other canned goods are shipped under the same general conditions of transportation and that their weights and values are not greatly different. This general testimony is supported by that given in the record in *Hires Condensed Milk Co.* v. *P. R. R. Co.*, 38 I. C. C., 441, in which the ratings on condensed milk in the official classification territory

were reduced to the same basis as applied on other canned goods. The ratings on the two classes of traffic are also the same in the western classification and the parity in rate is still maintained under the higher rate and lower minimum.

Upon a showing of this general character we have made findings of unreasonableness. *Edwards & Loomis Co.* v. *P., C., C. & St. L. Ry. Co.*, 45 I. C. C., 20. But when the compared rate is clearly shown to be less than that which the carrier could reasonably be required to publish, under the provisions of the act, as here, we can not use that subnormal rate as a measure of the reasonableness of the rates on commodities, although they possess similar transportation characteristics.

The two commodities, canned goods and canned milk, while by reason of analogy are generally given the same rates and ratings, are nevertheless distinct commodities, not competing with each other. It does not follow from the fact that the rate on one of these commodities is reduced because of competitive conditions, that the carrier is compelled simultaneously to place the other commodity upon the same basis, or that a violation of the act to regulate commerce necessarily results from the failure so to do. The record shows no fact tending to support the allegation as to undue prejudice, and is insufficient to show the unreasonableness of the rates as charged upon the shipments here in issue. The complaints will be dismissed.

No. 10662.

INTERSTATE IRON & STEEL COMPANY
v.
DIRECTOR GENERAL, PENNSYLVANIA RAILROAD COMPANY, ET AL.

Submitted October 24, 1919. Decided December 11, 1919.

Joint sixth-class rates applicable on mill cinder, in carloads, from East Chicago, Ind., to Detroit, Mich., found to have been and to be unreasonable. Reparation awarded and a reasonable relationship of rates prescribed for the future.

Henry J. Brandt for complainant.
James Stillwell for defendants.

REPORT OF THE COMMISSION:

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

Complainant is a corporation which manufactures billets, slabs, iron and steel shapes, wire and wire products, at East Chicago, Ind., and other points. In its complaint filed May 23, 1919, it alleges that the rate of $2.80 per long ton charged on 34 carloads of mill cinder shipped from East Chicago to Detroit, Mich., between October, 1917, and January, 1918, inclusive, was unreasonable and in violation of both provisions of the fourth section of the act to regulate commerce and that the present rate is unjust and unreasonable in violation of section 10 of the federal control act. Complainant prays reparation on the basis of a rate of $1.78 per long ton contemporaneously in effect from and to the same points over other routes and a reasonable rate for the future over the route of movement. For convenience we will state rates throughout this report in amounts per long ton of 2,240 pounds.

The shipments were transported as routed by complainant, over Pennsylvania Railroad western lines to Valparaiso, Ind., and the Grand Trunk Western Railway beyond, a distance of 309 miles. Charges thereon were assessed at the applicable joint sixth-class rate of $2.80.

Mill cinder is a low-grade, metalliferous, refuse product of steel furnaces, used, among other purposes, by mills producing lead for the removal of impurities. It is shipped in slabs or large pieces and

is immune from damage. In this case it was sold by complainant at point of origin for $2.45 per long ton, and the shipments ranged from 66,400 to 108,300 pounds per car.

A commodity rate of $1.78 contemporaneously applied from East Chicago to Detroit via the line of the Grand Trunk Western, a distance of 320 miles. The same rate applied via the respective lines of the New York Central and Michigan Central railroads, also via the Pennsylvania in connection with the Detroit, Toledo & Ironton, the Pere Marquette, and the Michigan Central railroads, respectively. In connection with the latter line the Pennsylvania enjoys a haul of but 17 miles, to Liverpool, Ind., as against 27 miles to Valparaiso; and the route comprising the Pennsylvania and Pere Marquette is 330 miles in length. In the cases of the individual routes of the New York Central, Michigan Central, and Grand Trunk Western the $1.78 rate includes a switching service by the Indiana Harbor Belt Railroad or the Baltimore & Ohio Chicago Terminal Railroad from complainant's East Chicago plant, which the Pennsylvania reaches directly. Over the foregoing routes the $1.78 rate also applied on pig iron, which had a value of $37 per long ton.

The present rate on mill cinder over the route of movement is $3.50. The present rate via the Pennsylvania in connection with the Detroit, Toledo & Ironton, the Michigan Central, or the Pere Marquette is $2.50; via the Baltimore & Ohio Chicago Terminal in connection with each of those trunk lines a rate of $2.20 is available. Over the Indiana Harbor Belt and the same trunk lines the rate is $2.50. All of these present rates were established in compliance with General Order No. 28 of the Director General of Railroads.

The consignee of complainant's shipments was located on the rails of the Michigan Central at Detroit and the switching charge of that line was absorbed under the rate assailed. A similar absorption was provided for under the $1.78 rate on shipments to Detroit over all other lines for delivery on the Michigan Central. The particular shipments were routed by complainant as above specified because of the inability of the Indiana Harbor Belt and the ability of the Pennsylvania to furnish the equipment, and because of a desire on the part of the complainant to give the Grand Trunk Western the traffic, under an erroneous impression that the $1.78 rate would apply.

The allegation respecting fourth section violations appears to have been predicated upon the fact that the $1.78 rate from East Chicago did not apply from Valparaiso, an intermediate point, the rate from which to Detroit was $2.70; but that with an appropriate rate of $1.78 from Valparaiso and the Pennsylvania's local rate of 95 cents from East Chicago to Valparaiso a combination lower than the rate assailed

would have resulted. But this involved no violation of either provision of the fourth section as far as the $2.80 rate was concerned.

Defendants adduced no evidence touching the reasonableness of the rate assailed, but cited *Terhune Lumber Co.* v. *S. Ry. Co.*, 42 I. C. C., 317, in which we held that the unreasonableness of a rate over a particular route of movement is not established by the mere existence of a lower rate over another route. But this case affords a materially wider range of comparisons, with both participating lines concurring in the cited lower rate over comparable routes.

Complainant's witness was unable to say how or by whom the freight charges on the shipments were paid or borne, but defendants agreed that the essential facts in that regard might be shown by appropriate affidavit should we determine that reparation is due.

AITCHISON, *Chairman:*

With slight modifications in form only, the foregoing is the report as to the facts proposed by our examiner and served upon the parties. The defendants have excepted to the conclusions proposed by the examiner, but have not pointed to any error in the statement of facts. From a consideration of the whole record we adopt the foregoing as a part of our report, and find and conclude, as the examiner recommended in the proposed report, that the rate charged was unreasonable to the extent that it exceeded $1.78 per ton of 2,240 pounds; that the present rate is and for the future will be unreasonable over the route of movement to the extent that it exceeds or may exceed the rate contemporaneously maintained by the Pennsylvania in connection with the Detroit, Toledo & Ironton, the Michigan Central, or the Pere Marquette; that complainant made various shipments as described; and that, subject to satisfactory proof that it paid and finally bore the charges thereon, it was damaged thereby and is entitled to reparation in the difference between the charges so paid and borne and those that would have accrued at the rate herein found to have been reasonable. Complainant should prepare and submit to defendants for verification a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, with appropriate proof concerning the payment of the charges. Pending the receipt of such a statement, we will not now enter any order as to reparation.

An appropriate order as to rates for the future will now be entered.

No. 10568.

CHARLES HECHTMAN

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted October 10, 1919. Decided December 11, 1919.

Rates on potatoes in carloads from Albany and Avon, Minn., to Creston, Iowa, and from Freeport, Minn., to Burlington, Iowa, found to have been and to be unreasonable to the extent that they exceeded or may exceed the aggregate of the intermediate rates subject to the act to regulate commerce contemporaneously in effect over the route of movement to and from St. Cloud, Minn. Reparation awarded and measure of reasonable maximum rates prescribed.

O. W. Tong for complainant.

A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, DANIELS, AND AITCHISON.

BY DIVISION 1:

Complainant is engaged in the wholesale potato business at Osseo, Minn. By complaint, filed April 10, 1919, as amended, he alleges that the rates charged by defendants on four carloads of potatoes shipped in September and October, 1918, from points in Minnesota to points in Iowa and Missouri, as hereinafter described, were unreasonable and in excess of the aggregate of the intermediate rates, and that a reconsignment charge on one of the shipments was without tariff authority. Reparation is asked. Rates herein are stated in cents per 100 pounds.

Two shipments moved from Albany and Avon, Minn., to Creston, Iowa, over the Great Northern Railway through St. Cloud, Minn., to Minnesota Transfer, Minn., and the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, beyond. Charges were collected at the joint commodity rates of 35 cents from Albany and 34.5 cents from Avon, plus a demurrage charge of $3.09 which is not in issue. One shipment which originated at Freeport, Minn., moved to Burlington, Iowa, over the Great Northern Railway through St.

Cloud, Minn., to Minnesota Transfer, and the Burlington beyond. Charges were collected on this shipment at a joint commodity rate of 29.5 cents. One shipment moved from Albany to St. Louis, Mo., over the Minneapolis, St. Paul & Sault Ste. Marie Railway to St. Paul, Minn., and the Burlington beyond, on which charges were collected at a joint commodity rate of 34 cents, plus a demurrage charge of $8.03, not in issue. All of the shipments were originally consigned to Chicago, Ill., with directions to hold at Minneapolis, Minn., and were reconsigned by the Burlington at Minnesota Transfer or St. Paul. A reconsignment charge of $2, not authorized by the applicable tariff, was collected on the shipment from Freeport to Burlington, so that this shipment was overcharged $2.

When the shipments moved, the aggregates of the intermediate rates applicable on potatoes in carloads between the points in question were as follows: Albany to Creston, 34.5 cents, composed of 7 cents to St. Cloud and 27.5 cents beyond; Avon to Creston, 34 cents, composed of 6.5 cents to St. Cloud and 27.5 cents beyond; Freeport to Burlington, 29 cents, composed of 7.5 cents to St. Cloud and 21.5 cents beyond. These departures from the provisions of the fourth section of the act to regulate commerce were protected by Fourth Section Order No. 7316. The aggregate of the intermediate rates which would have applied in the absence of the joint rate from Albany to St. Louis was 36.5 cents, composed of commodity rates of 14 cents to St. Paul and 22.5 cents beyond. The joint rate on this shipment was lower than the aggregate of the intermediate rates, and is not shown to be unreasonable. The rates charged and the rates upon basis of which reparation is sought are still in effect.

We find that the rates charged on the shipments from Albany and Avon to Creston and from Freeport to Burlington were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the aggregate of the intermediate rates subject to the act to regulate commerce contemporaneously in effect to and from St. Cloud. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that he has been damaged to the extent of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that he is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

Complainant also asks reparation on account of war taxes collected in excess of those which would have accrued if computed upon the rates herein found reasonable. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order such refund, or to include in an award of reparation the excess so paid.

An order for the future will be entered.

No. 10423[1]

MISSISSIPPI RIVER & BONNE TERRE RAILWAY

v.

DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

Submitted July 18, 1919. Decided December 11, 1919.

Through rates charged on shipments of railway fuel coal and commercial coal from mines in southern Illinois to destinations on the Mississippi River & Bonne Terre Railway in Missouri, composed of separately established proportional rates to and from East St. Louis, Ill., or Dupo, Ill., found unreasonable. Reparation awarded.

R. W. Ropiequet and *W. C. Ropiequet* for complainants.

Henry G. Herbel, *William G. Eggers*, *James M. Chaney*, and *M. W. Schaefer* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MCCHORD, *Commissioner.*

This case was the subject of a proposed report which was served on the parties. No exceptions to the report were filed by either side. The statement of facts as made by the examiner is found to be correct and accepted by us.

The Mississippi River & Bonne Terre Railway, complainant in No. 10423, and the St. Joseph Lead Company and St. Louis Smelting & Refining Company, complainants in Sub-No. 1, are before the Commission in this proceeding seeking reparation because of

[1] The report also embraces No. 10423 (Sub-No. 1), St. Joseph Lead Company et al. v. Same.

alleged unreasonable rates charged for the transportation of bituminous coal from mines in southern Illinois to points on the Mississippi River & Bonne Terre Railway during the period between August 26, 1917, and June 1, 1918. The shipments moved by way of East St. Louis, Ill., or Dupo, Ill., an East St. Louis rate point, on combinations of separately established proportional rates to and from East St. Louis. Rates are stated herein in amounts per net ton.

The Mississippi River & Bonne Terre Railway, hereinafter called the railway, is a common carrier operating a line of railroad from Riverside, Mo., to Doe Run, Mo., a distance of 46 miles, with various branches extending to points in the lead belt in eastern Missouri. It connects with the Missouri Pacific Railroad at Riverside, 30 miles south of St. Louis, and with the Illinois Southern Railway at Derby, Mo., 7 miles north of Doe Run. The coal which it purchased for company purposes during the period above stated originated principally at mines in Illinois in the so-called inner group, and was delivered at Bonne Terre and Herculaneum, 31 miles and 2 miles, respectively, south of Riverside. The St. Joseph Lead Company and the St. Louis Smelting & Refining Company operate smelters and conduct mining operations at several points along the railway, among others St. Francois, Herculaneum, Mills. Bonne Terre, and Hoffman, and also purchased coal at mines in Illinois located in the same and other groups, all of which moved to destination via East St. Louis or Dupo and Riverside.

Immediately prior to July 1, 1917, the proportional rate on bituminous coal to East St. Louis from mines in the inner group, using that group for purposes of illustration, was 25 cents. The proportional rate from East St. Louis to Herculaneum, applicable on coal mined in Illinois, was then 55.5 cents, and to Bonne Terre and other points mentioned above 75 cents. On July 1, 1917, and various dates thereafter, the rates from all Illinois mines to East St. Louis were increased 15 cents per ton under permission granted in *The Fifteen Per Cent Case*, 45 I. C. C., 303. Joint rates which were applicable from certain mines in the coal districts to stations on the railway via the Illinois Southern Railway and Derby were also increased 15 cents. Effective August 10, 1917, the proportional rates from East St. Louis, the other component of the through rates, were increased 15 cents, making the rate to Herculaneum 70.5 cents and to Bonne Terre and other points 90 cents. No additional increase was made in the joint rates. Upon the effective date of the new tariffs applying from East St. Louis the through rate from mines in the inner group to Bonne Terre, for example, which prior to July 1, 1917, had been $1, became $1.30. The complainants contend that an increase of 30 cents in the through rates was not authorized in *The Fifteen Per Cent Case.*

It will be recalled that shortly before the decision in that proceeding increases had been permitted to become effective generally in the rates on bituminous coal throughout the eastern district, and in order to preserve rate relationships as between the several districts the carriers in the southern and western districts were authorized to make similar increases in their rates. It was not contemplated, however, that that permission would be construed as authorizing a maximum increase of 15 cents per ton in each component of rates made on a combination of two or more proportional rates, as was done in this case, but that the through rates, whether maintained as joint rates or combinations of separately established rates, should be increased not more than 15 cents. Defendants made no attempt to justify the double increase and at the hearing stated their intention of publishing joint rates from the mines to destinations on the railway via East St. Louis on the basis of one increase of 15 cents plus the amounts authorized in General Order No. 28 of the Director General. Their only evidence consisted of a showing that the railway is owned by the St. Joseph Lead Company.

The reparation asked by the railway is calculated on the basis of the difference between the combination rates charged and those in effect just prior to July 1, 1917, increased 15 cents, less the difference between its proportion of the increased rates from East St. Louis and the amount it would have received if through rates had been in effect via East St. Louis and had divided on the percentages that applied in connection with lines publishing joint rates. The total claimed is $1,677.64. The St. Joseph Lead Company asks reparation in the amount of $7,050.68, of which $6,397.13 is claimed on account of the unreasonable rates charged, $479.69 because of various errors in rates and extensions, and $173.86 excess war-revenue tax. The claim of the St. Louis Smelting & Refining Company is for $845.22, including $24.54 excess war tax. It appears from statements submitted at the hearing that in some instances the shipments were undercharged and in others overcharged. For example, a rate of $1.30 was assessed on cars originating at Worden, Ill., consigned to the railway at Bonne Terre. At the time they moved the through rate was $1.425, composed of proportional rates of 52.5 cents to East St. Louis and 90 cents beyond. A rate of $1.425 was assessed on certain shipments originating at Breese, Ill., consigned to the St. Joseph Lead Company at Leadwood, whereas the combination rate was $1.30. Also, the through rate charged on shipments from Shiloh, Ill., on the Southern Railway, was $1.30 although there was in effect a joint rate of $1.25 applicable via East St. Louis and Riverside.

Defendants argue that the railway, because it concurred in the rates from East St. Louis and received a division thereof, was equally

at fault with its connecting carriers in committing the wrong of which it complains, and is therefore estopped from maintaining an action for the recovery of damages arising from the exaction of rates it was itself instrumental in imposing. They refer to *Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C., 450, *Commercial Club of Omaha* v. *A. & S. R. Ry. Co.*, 27 I. C. C., 302, and numerous proceedings in which the courts have denied contribution in the case of joint tort-feasors. Upon that principle of law they deny that the St. Joseph Lead Company may rightfully complain of the rates in which its railway was a participant.

The *Kaul Lumber Company* and *Commercial Club of Omaha Cases* involved, either in whole or in part, demands made by owners of tap lines for reparation on shipments of lumber from their mills, and it was held therein that reparation should not be allowed where the tap line, originating the shipments and receiving an allowance from the carriers, was a plant facility, or was a participant in the joint rates under which they moved. A different situation is presented here. The railway, as a shipper over the lines of other carriers, was lawfully entitled to take advantage of the joint rates applying to points on its own lines, providing its shipments were consigned to such points and were, in good faith, sent to such billed destinations. *Conference Ruling 225; Tuckerton R. R. Co.* v. *P. R. R. Co.*, 52 I. C. C., 319. It had precisely the same rights as an individual with respect to its fuel coal, and unless it was in fact responsible for the establishment and maintenance of the rates under consideration, has the same privilege of challenging their reasonableness. The rates from East St. Louis are published in an agency tariff to which the railway is a party, and the only effect of a refusal to join in the tariff would have been to deprive shippers located on its rails of the benefit of joint rates. The record shows that it was opposed to the double increase and made repeated efforts toward the establishment of joint rates on the basis of those that applied from mines on a few of the originating carriers in southern Illinois by way of the Illinois Southern Railway and Derby.

With reference to the claim of the St. Louis Smelting & Refining Company it is urged that reparation should not be awarded on the ground that complainant could have secured lower rates if it had routed its shipments, which originated at Murphysboro, on the Mobile & Ohio Railroad, and at Clifford and Herrin, on the Illinois Central Railroad, by way of the Illinois Southern and Derby. A joint rate of $1.15 was applicable from Murphysboro and Herrin via the Illinois Southern, as compared with combination rates of $1.425 from the former and $1.30 from the latter, which complainant paid. Regardless, however, of the lower rates which it might have

obtained it can not be urged that complainant should be required to suffer a loss resulting from an unreasonable exaction on the part of the defendants and that the latter should be permitted to retain their excessive profit. The principle is well established that he who has paid and borne an unreasonable charge for transportation may recover the difference between the amount so paid and that which would have accrued at a reasonable rate.

As hereinbefore stated, complainants in the subnumbered complaint are seeking a refund of a portion of the amount collected by defendants under the statute levying a tax of 3 per cent of the transportation charge for war-revenue purposes. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war tax.

Upon the facts of record we find that defendants have not justified the double advance in proportional rates; that the rates so increased were unreasonable to the extent of 15 cents per ton, and that on shipments made at combination rates complainants have been damaged to the extent that the charges paid exceeded those that would have accrued under the rates found reasonable at the time the shipments moved, and that they are entitled to reparation. The exact amount of reparation due can not be determined upon this record, and in the case of the Mississippi River & Bonne Terre Railway it is dependent upon the divisional arrangements which the carriers make. Complainants should prepare and submit for verification statements showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of statements so prepared and verified we will consider the entry of an appropriate order as to reparation.

No. 10187.

MICHIGAN PAPER MILLS TRAFFIC ASSOCIATION ET AL.

v.

NEW YORK CENTRAL RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Decided December 11, 1919.

Upon further consideration of the former report herein, 53 I. C. C., 344, and of the schedules of rates submitted by carriers in response thereto, *Held:*

1. Undue prejudice against Kalamazoo and other complaining points and in favor of Virginia points, found in previous reports to exist, required to be removed.
2. Issues in this case too limited to permit entry of order prescribing specific class rates on printing, book, and wrapping paper, in carloads, for general application from and to points in eastern trunk line territory and between points in this territory and New England. Consideration of such rates should await submission by carriers of revised scale of class rates for use from and to these points or filing of appropriate complaints.

Appearances same as in previous report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner:*

In our former report in this case, 53 I. C. C., 344, we considered the rates on printing, book, and wrapping paper, in carloads, from Kalamazoo and other Michigan mills to destinations in eastern trunk line territory, which complainants charged were unreasonable and unduly prejudicial to the extent that they exceeded rates on these commodities to the same destinations from points in eastern trunk line and New England territories. The rates from Kalamazoo and other complaining points to the points of destination here involved were and are sixth class, prescribed by us in *Official Classification Rates on Paper*, 38 I. C. C., 120. On the other hand the rates alleged to be unduly preferential, except those from Pennsylvania, are and appear always to have been made more with reference to commercial competition than to any other consideration. From mills in Pennsylvania to the eastern markets, sixth-class rates apply. Complainants had insisted that the alleged discrimination against them might be removed by increasing the rates in the east to sixth class or by granting to them rates made with regard to the same considera-

tions that influence the eastern adjustment. We pointed out, however, that the present rates in the east, even though below sixth class, are generally higher, on a distance basis, than the sixth-class rates in effect between points in central territory; that, however, the reverse is true as to the rates from Virginia producing points. We therefore found that the present adjustment was unduly prejudicial to Kalamazoo and other complaining mills and unduly preferential of Covington and other Virginia points in that the rates from the former exceeded, distances considered, the rates from the latter. The record did not warrant a finding of unreasonableness.

With respect to rates on these commodities between points in eastern trunk line territory other than from Virginia, we said:

> It is clear from the evidence that the rates on paper throughout trunk line territory must be revised to make them conform to a definite and uniform basis. In no other way can existing inequalities be removed or the rate structure purged of preferences and inconsistencies that have for years been a source of dissatisfaction and complaint. To say that the sixth-class rates are themselves a "hodge-podge" is by no means to be accepted as an adequate answer to the complaint. The Commission having expressly held that sixth class is the proper basis for rates on paper in this territory, it may reasonably expect a thorough and prompt revision of the rate structure now existing and the establishment of class rates that will constitute, not a hodge-podge, but a sound and defensible basis for a proper revision of rates on paper. The basis for the New England rate structure was before us in *Proposed Increases in New England*, 49 I. C. C., 421.
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> The defendants will be allowed 45 days from the service of this report to propose a revised schedule of rates on paper that will eliminate the inequalities disclosed by the evidence. The case will be held open for such further action as may be deemed appropriate.

Later this period of 45 days was extended to September 15, 1919.

The carriers' response to the above is that any efforts of theirs to check in a consistent basis, or the sixth-class rates proposed in the tentative trunk line scale, will result for the most part in reductions; that so far as the Michigan producing points are concerned this will increase rather than decrease any undue prejudice; and that they are not disposed at this time to put in any basis which would result in lower revenues. They indicate that when the trunk line scale as a whole is proposed and they can take care of these sixth-class decreases by corresponding increases in the other classes, they will then be better in position to establish a properly related adjustment of class rates on paper. They submit in lieu thereof what they term an emergency basis of rates. Taking New York City as a representative point of destination, the following will show present and proposed structures. Rates are stated in cents per 100 pounds.

From New England points of production served by the Boston & Maine and Maine Central railroad companies, the present rates range from 17½ to 24½ cents, while the sixth-class rates are from 2 to 13 cents higher. From Holyoke, Mass., there is a commodity rate 3 cents higher than the sixth-class rate. It is proposed to decrease the commodity rates from Boston & Maine points from one-half to 2½ cents and to reduce sixth class to the level of the proposed commodity rates. From Maine Central points, 16 in number, increases from 1 to 3 cents are proposed from 7 points; the rate remains the same from 6 points; and decreases from one-half cent to 1 cent are proposed with respect to the remaining 3 points. Here, again it is intended to lower sixth class to the level of the proposed commodity rates.

Producing points in the state of New York are served by the New York Central Railroad Company and the Delaware & Hudson Company. Rates therefrom range from 15½ to 25 cents. The sixth-class rates are from 1 to 4 cents higher, except in two instances where they are the same as the commodity rates. From these New York points there is no disposition to change either the existing commodity or class rates when the traffic is for track delivery in New York City. On traffic originating on the Delaware & Hudson Company billed lighterage delivery, however, decreases of from 1 to 3½ cents are proposed.

Except in two instances, the present rates on paper from producing points in Pennsylvania are sixth class. Several unimportant changes are proposed here, but the adjustment remains substantially the same.

The two paper-manufacturing localities in West Virginia take commodity rates 2½ and 7½ cents below sixth class. It is carriers' proposal not to change the class rates but to increase one of these commodity rates one-half cent.

From the three Virginia points commodity rates of 20 cents prevail while the class rates range from 29 to 32½ cents. Carriers propose not to change the class rates but to increase the commodity rates to 22 cents.

This so-called emergency basis met criticism on every hand. Complainants protest because, as they state, these proposed rates are again made primarily with regard to commercial competition, while complainants' rates are not made in that way. They further contend that the proposed rates from Virginia are not sufficiently increased and that the adjustment offered is as open to criticism and as full of inconsistencies as the present rates.

The interveners, who represent the eastern producing districts, likewise object, but principally to the increases proposed. They, too,

claim that the proposed revised basis will not tend any more toward uniformity than the present adjustment. One of the interveners stated that if their rates were permitted to be increased without the compensating relief which a proper general alignment would afford them, they would file a formal complaint challenging their level. Another protested that "consistency" was attempted by increases from one of its mills, but that this virtue was overlooked in so far as consequent decreases from another of its mills was concerned.

We can not approve the adjustment submitted by the carriers, even as an emergency measure. However, neither the issues nor the evidence in this case warrants the entry of an order requiring the proper alignment of all rates on printing, book, and wrapping paper from and to points in eastern trunk line territory and between points in this territory and New England. The eastern rates have not been brought in issue except for purposes of comparison. Nor would it be proper, in the absence of more comprehensive hearings, to require the lowering of the present sixth-class rates in eastern trunk line territory to the level of the present commodity rates. A revised scale of class rates for application in this territory and between this territory and New England, such as we understand was contemplated by carriers, will go far toward straightening out such illogical adjustments as that called to our attention in this case. However, if the publication of such a scale should not remove particular causes of complaint, or if such a scale should not be proposed within a reasonable time, the matter may then be brought to our attention by appropriate and sufficient complaints.

Complainants are entitled to relief from the undue prejudice found in our previous report to exist, and an order to this effect will be entered.

No. 10365.

KAW RIVER SAND & MATERIAL COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted October 20, 1919. Decided December 11, 1919.

Charges for the transportation of sand, in carloads, from complainant's plant near Turner, Kans., to destinations within the switching limits of Kansas City, Mo.-Kans., found unreasonable and relatively unreasonable to the extent that they exceed charges from Sirridge, Kans. Reasonable maximum rate prescribed. Reparation awarded.

Hal R. Lebrecht and *K. M. Wharry* for complainant.

S. C. Bates for Stewart Sand Company, intervener.

E. H. Hogueland and *F. W. Peck* for Muncie Sand Company, intervener.

J. D. Cornell for Kansas City, Kaw Valley & Western Railway Company.

F. E. Andrews and *James L. Coleman* for defendants under federal control.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner:*

A proposed report in this proceeding was served upon the parties, exceptions were filed and argument had.

Complainant alleges that the total charges for the transportation of sand, in carloads, from its plant near Turner, Kans., to points within the switching limits of Kansas City, Mo.-Kans., are unreasonable and unduly prejudicial to complainant and unduly preferential of a plant located at Sirridge, Kans. Complainant asks reparation on shipments moving since June 25, 1918, and the Stewart Sand Company, an intervener, also asks reparation on shipments made by it from complainant's plant since that date.

Sand for the Kansas City district is obtained from the Missouri River and from the Kaw River, its tributary from the west. Complainant's plant is on the south side of the Kaw River about 4,380 feet northwest of Turner, a station on the main line of the Atchison,

Topeka & Santa Fe Railway. The plant is 1.64 miles outside the switching limits of Kansas City. A switch track from the plant to Turner was constructed and is maintained by complainant and all shipments are billed from Turner. Cars are assembled in the main yards of the Santa Fe near Turner and in lots of 18 as a maximum are moved by switch engines to the plant where they are loaded from a tipple and as loaded are moved down a gravity track until all are loaded, when they are again taken by a switch engine to classification yards and to destination or to interchange with connecting lines.

The Stewart Sand Company, an intervener, operates a plant at Sirridge, Kans., on the north bank of the Kaw River, opposite complainant's plant, which is served by the Kansas City, Kaw Valley & Western Railway, and is within the switching limits. This company also operates two other plants, both located within the switching limits, one about a mile east of Sirridge on the north bank of the Kaw River, served by the Chicago, Rock Island & Pacific Railway, hereinafter referred to as the Rock Island, and another on the south bank of the Missouri River in the heart of the switching district and served by the Missouri Pacific.

The Muncie Sand Company, another intervener, has a plant at Muncie, Kans., on the north bank of the Kaw River, about 6 miles west of the switching district, served by the Union Pacific Railroad.

Complainant and its competitors, the interveners, furnish all the sand used in the Kansas City district. All the carriers transporting sand by rail which serve the switching district are made defendants, and with the exception of the Kansas City, Kaw Valley & Western, hereinafter called the Kaw Valley, and the Kansas City Northwestern Railroad, all these carriers are under federal control. Team tracks and industries on all lines, except the Chicago Great Western and the Kansas City Northwestern, may be reached from Turner, by a two-line haul. The average distance from Turner to interchange tracks is about 9 miles; the average distance to usual delivery tracks is approximately 8 miles. No deliveries to points within the switching limits on lines other than the Missouri, Kansas & Texas from Muncie require more than a two-line haul. The average distance from Muncie to interchange tracks is given as about 9¼ miles; the average distance to usual delivery tracks does not appear. The Kaw Valley has direct connection with the Kansas City Southern, the Kansas City Terminal, and the Rock Island lines, only 3 of the 15 carriers serving the district. Shipments from Sirridge going to deliveries on other roads require a three-line haul; the average distance to such deliveries is not given in the record, but appears to be about 8 or 9 miles.

Statements filed by the carriers show that during a six-months period preceding January 1, 1919, 60 per cent of the movement from

the plant at Sirridge involved two-line hauls and the balance three-line hauls; that from the plant at Turner nearly 18.5 per cent reached destinations by a one-line haul and 80 per cent went to destinations necessarily involving a two-line haul; and that from the plant at Muncie over 7 per cent reached destinations on the Union Pacific by a one-line haul and more than 92 per cent required only a two-line haul.

During the same period the Stewart Sand Company shipped from its Missouri River plant 72 cars, only 1 of which moved to a destination not reached by the Missouri Pacific. From its plant on the Rock Island this company shipped 304 cars to delivery points requiring handling by two, three, or four lines.

Prior to June 25, 1918, the rates from Turner and Muncie to points within the switching district were 1 cent per 100 pounds or $10 per car of 100,000 pounds, which accrued to the initial line, plus switching charges of connecting lines of from $3 to $8 per car. The charges from the plant at Sirridge were based on a charge of $6 per car for the initial line plus the same switching charges. Because of handling by an additional carrier in many cases, however, the charges from Sirridge more nearly approximated the charges from other plants than would otherwise be the case. The charge from Turner to the Argentine tracks on the Santa Fe was three-quarters of 1 cent per 100 pounds, and to industries at Sugar Creek on the Santa Fe 1¾ cents, the total haul being about 18 miles.

In applying General Order No. 28, movements from Turner and Muncie were treated as road hauls and rates were increased by the initial lines 1 cent per 100 pounds, and under the rule for disposition of fractions to the full figures, resulting in an average increase on complainant's shipments of about 80 per cent, the lowest being approximately 50 per cent, and the highest 166 per cent. The movement from Sirridge was treated as a switching movement and the charges, except those of the Kaw Valley, were increased 25 per cent, except to industries on the Kansas City Terminal as to which no increase was made. The charge of the Kaw Valley was increased 25 per cent October 28, 1918.

The switching charges in connection with complainant's shipments are those applying in connection with line-haul rates and were not increased, although interterminal switching charges applying from plants within the switching limits were increased 25 per cent.

The Union Pacific absorbs switching charges at Kansas City where its total revenue is $15 or more per car, but the Santa Fe does not. Therefore the charges upon a 100,000-pound car from Muncie to most points in the Kansas City district is now $20 per car, while from Turner the charges to the same points are from $20 to $31 per car, and the charges from Sirridge to most points of delivery are ma-

terially less than from either of the other plants, and are from $11.50 to $27.50 per car. For example, to deliveries where the movement necessitates the use of two lines and the delivering-line switching charge was $3 per car, the charges on shipments from Sirridge are now $11.50 per car, from Turner $23, and from Muncie $20; and to industries on the Santa Fe where a one-line haul is involved from Turner, a three-line haul from Sirridge, and a two-line haul from Muncie, the charges are $20 from Turner and Muncie and $18 from Sirridge.

It is practically admitted by all parties that under present rates complainant's plant is subjected to undue prejudice and that a readjustment of the rates is necessary. On behalf of the Director General a new scale of sand rates, intended to eliminate the discrimination complained of, was submitted, proposing rates of 2¼ cents from Turner and Sirridge and 2½ cents from Muncie to all points in the district which involve a one or two line haul, and 2¾ cents from Turner and Sirridge and 3 cents from Muncie to all points involving a three-line haul. Deductions from these rates of one-half cent per 100 pounds were proposed when the shipper furnishes the equipment. The Stewart Sand Company is the only producer owning private equipment. Rates for transportation in privately owned or leased equipment are not assailed in the complaint and need not be specifically dealt with. The rates proposed by the Director General were considered by complainant and interveners as being unreasonably high.

Complainant shows that from industries located near its plant, but within the switching limits, switching charges on sulphuric acid and refined oil to points within the switching limits would be from $13.50 to $17 per car, while the charges from its plant on sand, a lower-grade commodity, are from $23 to $28 per car of 100,000 pounds, and urges that the charges from its plant should be more closely related to the charges from these industries.

Comparison is also made of the charges assailed with charges between points within or near the switching limits of Chicago, Omaha, and St. Louis, and with rates prescribed by the Commission in several reported cases, which in some instances are lower for greater distances. No comparison of transportation conditions is made, however.

The Stewart Sand Company urges that rates from its plant located within the switching limits have been in the past and should be slightly lower than the rates from plants outside the limits, and that as a large percentage of shipments from Sirridge moves over lines of more than two carriers, different rates for two and for three line hauls would subject this plant to undue prejudice if rates are to be made the same to all points within the switching limits.

On behalf of defendants it was shown that cars loaded with sand from complainant's plant take about 5 days to make a round trip where there is a one-line haul, and about 10 days when the movement is over the rails of two or more lines. This showing defendants sought to connect with the fact that the average earning per day of a Santa Fe car for the year 1917 was $3.98, and the inference sought to be deduced was that a car in this service should earn from $19.90 to $39.80 per trip.

Since the hearing, authority has been issued by the Railroad Administration for the publication of rates on sand of 2 cents per 100 pounds when loaded in carriers' equipment and 1½ cents per 100 pounds when loaded in equipment owned or leased by the shippers, from Muncie, Turner, and Sirridge and other sand-loading points to industry tracts within the Kansas City switching district and to team tracks of the Santa Fe, Rock Island, Kansas City Southern, Missouri Pacific, or Union Pacific on sand originating on one of these lines for delivery on the team tracks of that line. The evidence does not warrant a difference in rates between movements to industries and movements to team tracks.

Complainant urged and defendants agree that rates from Turner, as well as from other shipping points, should be made the same to de-deliveries within the Kansas City switching district regardless of the number of lines participating in the transportation.

Upon consideration of the whole record, including the certificate of the Director General, we are of the opinion and find that the rates on sand in carriers' equipment, from complainant's plant near Turner to deliveries within the Kansas City switching district are and for the future will be unreasonable to the extent that they exceed 2 cents per 100 pounds, and relatively unjust and unreasonable to the extent that they exceed the rates contemporaneously in effect from Sirridge. We further find that complainant and the Stewart Sand Company made shipments at the rates described from Turner and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rate of 2 cents per 100 pounds herein found reasonable; and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined upon this record. Complainant and intervener should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice including the dates on which charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 10559.

CHAMBER OF COMMERCE OF MONTGOMERY, ALA., ET AL.

v.

DIRECTOR GENERAL AND LOUISVILLE & NASHVILLE RAILROAD COMPANY.

PORTIONS OF FOURTH SECTION APPLICATION No. 1952.

Submitted October 23, 1919. Decided December 11, 1919.

Less-than-carload rates on iron and steel articles to Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, and Evansville, Ind., St. Louis, Mo., East St. Louis and Belleville, Ill., and points having rates based thereon, found unduly prejudicial. Undue prejudice ordered removed. Fourth section relief denied.

Bernard Lobman, *M. M. Caskie*, and *Charles E. Cotterill* for complainants.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner:*

In this proceeding a proposed report of the examiner was served upon the parties.

The Chamber of Commerce of Montgomery, Ala., and several of its members allege that the rates on certain iron and steel articles from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., East St. Louis and Belleville, Ill., and points having rates based thereon, to Montgomery, were and are unreasonable, unduly prejudicial, and in violation of the fourth section of the act to regulate commerce. At the hearing the allegation of unreasonableness and all claims for reparation were withdrawn.

The commodities involved are bar iron, rod iron, bolts, nuts, rivets, washers, bar steel or steel bars, castings and forgings, woven-wire fencing, iron links and pins, nails in kegs, cast-iron pipe, wrought-iron pipe, pipe joints and fittings, iron plow parts, plow shapes, wire rods, and horse, mule, or ox shoes, in less-than-carload quantities, also woven-wire fencing, in carloads.

There was assigned for hearing in connection with this complaint portions of Fourth Section Application No. 1952 of the Louisville & Nashville, in which the interested carriers seek authority to continue rates on the above articles from the points of origin previously specified in both carloads and less than carloads to Montgomery, which are higher over the same route than rates contemporaneously maintained to Catoma, Ala., and other more distant points. Woven-wire fencing, in carloads, was withdrawn from the list of commodities named in the complaint but remains for consideration in the above fourth section application.

Under exceptions to the southern classification the Louisville & Nashville in 1899 established a class I rating on various iron and steel articles, in carload and less-than-carload quantities, including those embraced in this complaint when destined to local, noncompetitive stations on its line somewhat in line with the rates to Montgomery and other basing points.

From time to time the southern lines, generally, have increased the basing-point rates toward the class basis, and have canceled all lettered ratings lower than class D. The Louisville & Nashville did likewise on traffic to competitive points, but to noncompetitive points on its line the class I exception remained in effect. Montgomery is a competitive point, and while commodity rates are at present published thereto they are higher than the class I rates to stations north and south of Montgomery to such an extent that complainants deem the adjustment unduly preferential to competing merchants and unduly prejudicial to themselves.

The rates will be hereinafter stated in cents per 100 pounds. Those in effect from Louisville, a representative point of origin, to Montgomery are 52.5 cents on bolts, nuts, rivets, washers, castings, and forgings, 62.5 cents on woven-wire fencing, and 51.5 cents on the other iron and steel articles named above.

Montgomery is 489 miles south of Louisville. From Louisville to stations from Coopers, Ala., 35 miles north of Montgomery, to McGehees, Ala., 9 miles south thereof, the rate on class I articles is 45 cents; to Tyson, Ala., 16 miles south of Montgomery, and stations beyond and including Georgiana, Ala., 59 miles south of Montgomery, 47.5 cents; to all stations south of Georgiana, to and including Hurricane, Ala., a point 106 miles south of Montgomery, 50 cents. Rates to Montgomery from points north of the river crossings having rates based thereon reflect similar disparities.

It is contended by complainants that they are at a serious disadvantage in marketing iron and steel articles in neighboring territory in competition with jobbers at Louisville, Cincinnati, St. Louis, and other large distributing points. Louisville dealers can place various

iron and steel articles at Catoma, Ala., the first station south of Montgomery, at less-than-carload rates, 13 cents less than the rates into and from Montgomery. This disadvantage is augmented as the distances to the consuming points from Montgomery increase, due to the fact that the class I rates to the local points are blanketed on traffic from the northern points. It is said that many hardware dealers at Montgomery have been forced to discontinue handling certain classes of iron and steel articles because of the unfair advantage of their competitors at the river crossings.

Complainants do not seek a reduction in the measure of their rates, but insist that the maladjustment should be corrected by increasing rates from the points of origin to noncompetitive local points on the Louisville & Nashville between Birmingham, Ala., and Mobile, Ala.

The discrepancies between the rates on iron and steel articles to Louisville & Nashville local stations and those to competitive points are attributed by defendants to a failure to revise their exception sheets to correspond with various changes in the southern classification. Those changes brought about the application of fourth, fifth, and sixth class rates to the common points, in the absence of commodity rates, resulting in higher charges than under class I rates applying to local stations. In 1917 the Louisville & Nashville, by fifteenth section application, sought permission to file a tariff canceling all class I exceptions and to thereafter have the normal class rates to apply, which application, together with all others, was withdrawn at the time General Order No. 28 was issued by the Director General. There is now before the Director General an application filed by the Louisville & Nashville seeking authority to discontinue class I rates on that line. Defendants state that they contemplate placing Montgomery on a class basis with respect to iron and steel articles, and that their proposed readjustment will accord Montgomery lower rates, relatively, than those to the local stations north thereof, in accord with authority granted in Fourth Section Order 3866 to maintain lower rates to Montgomery than to intermediate stations. As yet such revision has not been made.

We find that the rates assailed are, and for the future will be, unduly prejudicial to Montgomery to the extent that they exceed or may exceed the rates contemporaneously maintained on like traffic to Catoma, Ala.

No testimony was offered in support of the fourth section application, and it will be denied to the extent that it is involved herein.

Appropriate orders will be entered.

No. 8632.[1]

SULZBERGER & SONS COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY AND DIRECTOR GENERAL.

PORTIONS OF FOURTH SECTION APPLICATION No. 630.

Submitted October 27, 1919. Decided December 11, 1919.

Rates on fresh meats in straight carloads, or in mixed carloads with packing-house products, from Kansas City, Kans., to Oklahoma City, Okla., found to have been and to be unreasonable. Reasonable maximum rate prescribed for the future, reparation awarded, and fourth section relief denied.

Luther M. Walter and *John S. Burchmore* for complainant.

R. D. Rynder for Swift & Company and *W. W. Manker* for Armour & Company, interveners.

James L. Coleman and *T. J. Norton* for defendants.

R. V. Fletcher for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner:*

In this proceeding a proposed report was prepared by the examiner and served upon the parties. No exceptions were filed. We have followed his report.

Complainant, whose name was changed on July 27, 1916, to Wilson & Company, Incorporated, is a corporation engaged in the buying and selling of live stock and the products thereof. It has packing houses at Kansas City, Kans., Oklahoma City, Okla., and other points. The original complaint was filed on February 5, and the two subnumbers on March 18, 1916. The rate on fresh meats, and on dressed beef, which takes the same rate, in straight or mixed carloads, from Kansas City to Oklahoma City was attacked as unjust and unreasonable and in violation of section 4 of the act to regulate commerce. Complainant seeks reparation and the estab-

[1] This report also embraces No. 8632, Sub-No. 1, Same *v.* Missouri, Kansas & Texas Railway Company and Director General, and No. 8632, Sub-No. 2, Same *v.* St. Louis & San Francisco Railroad Company and Director General.

lishment of a rate of 49.25 cents per 100 pounds. The claims were presented informally on December 23, 1914. Rates are stated in cents per 100 pounds throughout this report.

By order of March 12, 1917, the proceeding was consolidated with No. 8436, *Live Stock and Products Case.* Subsequently complainant was advised that the Commission would not proceed with No. 8436 at that time, and that this proceeding could be heard independently. On May 27, 1919, a motion and supplemental complaint were filed making the Director General of Railroads an additional defendant to the three complaints and renewing the allegations made therein.

In connection with this proceeding there were set for hearing portions of Fourth Section Application No. 630, filed by F. A. Leland, agent, by which the carriers named as parties thereto ask authority to continue to charge for the transportation of dressed beef or fresh meats, in straight or mixed carloads, from Omaha, Nebr., to Oklahoma City rates which are lower than the rates contemporaneously maintained on like traffic from Kansas City and from or to other intermediate points.

Swift & Company and Armour & Company intervened at the hearing. Their position is that there should be a reasonable rate from Kansas City to Oklahoma City, and that the rate from Omaha should be made by adding thereto a reasonable differential.

For many years prior to June 25, 1918, the rate on fresh meats from Kansas City to Oklahoma City was the third-class rate of 74 cents. The rate contemporaneously in effect from Omaha to Oklahoma City was 64.25 cents, or 24.75 cents less than the third-class rate from Omaha of 89 cents. Using this amount of 24.75 cents under the third-class rate as a measure, complainant sought a rate of 49.25 cents. At the hearing this prayer was amended so as to ask for rates on the basis of the distance scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, or 42 cents prior to June 25, 1918, and that rate plus 25 per cent, or 52.5 cents, thereafter.

In the case cited we prescribed, among other things, a distance scale, popularly known as the "1716 scale" from the serial number of our report, and so referred to herein, for application to the transportation of fresh meat, carload minimum 20,000 pounds, "between all points in New Mexico, Texas, Oklahoma, Arkansas, Missouri south of the Missouri River, and Louisiana west of the Mississippi River, and also from Wichita to points in that territory." In *Fresh Meats and Packing-House Products from Wichita, Kans.*, 23 I. C. C., 652, the application of this scale to transportation from St. Louis, Mo., Kansas City, Wichita, Oklahoma City, and Fort Worth to points in Arkansas and Louisiana was found proper. The following table

shows the present and former rates from Kansas City and Omaha to Oklahoma City:

Comparison of rates on fresh meats, in carloads, from Omaha and Kansas City to Oklahoma City with third-class rates and rates under the "1716 scale" between the same points.

To Oklahoma City from—	Short-line distance.	Fresh meats.		Third class.		"1716 scale."	
		Prior to June 25, 1918.	Effective June 25, 1918.	Prior to June 25, 1918.	Effective June 25, 1918.	Prior to June 25, 1918.	Effective June 25, 1918.[1]
	Miles.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Omaha	537	64½	80½	89	111½	57	71¼
Kansas City	343	74	92½	74	92½	42	52½

[1] As increased 25 per cent under General Order No. 28 of the Director General.

The 64.25-cent rate from Omaha to Oklahoma City was based upon a rate of 37 cents from Omaha to Wichita, Kans., plus 27.25 cents beyond, the latter being the distance charge under the 1716 scale. Defendants claim that the 37-cent rate, which was effective from September 6, 1909, to March 11, 1913, was published in error.

The adjustment as between Omaha and Kansas City has been the subject of frequent consideration by the packers and the carriers. During 1914 and 1915 certain carriers endeavored to have the Kansas City-Oklahoma City rate made 9 cents under the Omaha rate, or 55.25 cents, but there was objection from other roads. Finally, complainant was advised that as the carriers could not agree upon any readjustment its recourse was to the Commission.

In *Omaha-Oklahoma Fresh-Meat Rates*, 28 I. C. C., 454, the carriers attempted to increase certain rates, among them the 64.25-cent rate from Omaha. In finding that the proposed increased rates had not been justified, we said, page 457:

> Since the rates now in effect from Omaha * * * to Oklahoma destinations are on a higher basis than those proposed by us in *Investigation of Alleged Unreasonable Rates on Meats, supra*, for the movement between points in New Mexico, Texas, Oklahoma, Arkansas, Missouri, and Louisiana, it would seem that the proposed increase is not proper.

A second attempt to increase the Omaha rate was made in 1916, but the proposed increased rate was suspended in Investigation and Suspension Docket No. 850, which was later consolidated with the *Live Stock and Products Case.*

Defendants made no attempt to justify the fourth section departure, and assert that "there should be a higher rate from Omaha than from Kansas City." On May 1, 1919, the Western Freight Traffic Committee filed with the director of traffic, United States Railroad Administration, its application No. 2974, in which was

sought, among other things authority to increase the rate from Omaha to Oklahoma City to 11.5 cents above the rate from Kansas City. In other words, in lieu of the former suggestion that a differential of 9 cents should be effected by reducing the rate from Kansas City, it is now proposed to secure this 9-cent differential, plus 25 per cent, by increasing the rate from Omaha. This would make the rate from Omaha $1.04, or 7.5 cents less than the third-class rate from that point. It was testified that action on this application has been deferred because of the protests of packers at Omaha.

An exhibit was introduced by defendants to show that there is no uniform relationship between Omaha and Kansas City in respect of rates on fresh meats to Oklahoma points. In some instances the fresh-meats rates and the third-class rates shown in the exhibit are the same, but in the majority of cases the fresh-meats rates are lower. The following table consists largely of comparisons taken from defendants' exhibit:

Comparison of present fresh-meats rates, carload, with the third-class rates and those under the "1716 scale," plus 25 per cent.

From—	To—	Short-line distance.	Fresh meat.	Third class.	"1716 scale," plus 25 per cent.
		Miles.	*Cents.*	*Cents.*	*Cents.*
Fort Worth, Tex	Enid, Okla	271	45	79	45
Do	Fort Smith, Ark	303	52	107½	49
Wichita, Kans	McAlester, Okla	306	49	77½	49
Fort Worth, Tex	Tulsa, Okla	306	49	82½	49
Wichita, Kans	Fort Smith, Ark	322	50	91½	50
Kansas City, Mo	do	328	50	81½	50
Kansas City, Kans	Oklahoma City, Okla	343	92½	92½	52½
Oklahoma City, Okla	Kansas City, Kans	343	32½	92½	52½
Wichita, Kans	Fort Worth, Tex	368	55	120	55
St. Louis, Mo	Fort Smith, Ark	416	60	94	60
Omaha, Nebr	Enid, Okla	474	72½	104	66½
Kansas City, Kans	Texarkana, Ark	487	66½	110	66½
Denver, Colo	Wichita, Kans	519	75	87½	69
Omaha, Nebr	Fort Smith, Ark	528	59	100	71½
Do	El Reno, Okla	535	79	111½	71½
Do	Chickasha, Okla	568	82½	111½	74
Do	Texarkana, Ark	681	77½	121½	84

Particular attention was directed by complainant to the rate of 32.5 cents from Oklahoma City to Kansas City, which is considerably lower than the rate for the same distance under the 1716 scale as increased 25 per cent, as contrasted with the rate of 92.5 cents in the reverse direction. In *Investigation of Alleged Unreasonable Rates on Meats, supra*, we held that the rate from Oklahoma City to Kansas City should not exceed that from Wichita to the same point by more than 40 per cent. Complainant cites a number of instances in which the rates on fresh meats between two points are the same or substantially the same in both directions. Defendants endeavor to explain the Kansas City-Oklahoma City adjust-

ment on the ground that there is a greater movement of fresh meats northbound than southbound between the two points.

Something over 20 cars of fresh meats were shipped by complainant from Kansas City to Oklahoma City via the lines of defendant railroads in a period of over five years. Complainant insists that the movement of fresh meats from Kansas City to Oklahoma City has been light because of the high rate. As the predominant empty movement of refrigerator cars between Kansas City and Oklahoma City is southbound, complainant urges that the rate sought will enable it to make shipments in cars which otherwise would move empty.

Wichita, Kans., is about 213 miles southwest of Kansas City and is served by the same carriers. Shipments from Kansas City to Oklahoma City can move through Wichita. The Kansas City-Texarkana rate is on the basis of the 1716 scale plus 25 per cent. Shipments to Texarkana move through a part of Oklahoma. The Omaha-Texarkana rate is considerably below the distance-scale rate plus 25 per cent.

Complainant contrasts the rate on fresh meats from Kansas City to Oklahoma City of 92.5 cents, for a distance of 343 miles, with the Omaha to Kansas City rate of 20 cents for 200 miles. The 20-cent rate applies in both directions.

The scales prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, *supra*, produced an average relationship of fresh meat to live-stock rates of 166⅔ per cent, and fresh meat to packing-house products of 120 per cent. The rate on fresh meats from Kansas City to Oklahoma City is 264 per cent of the rate on cattle, and 161 per cent of the rate on packing-house products. The relationship of the rate on fresh meats to those on live stock and packing-house products is not in issue.

The Chicago, Rock Island & Pacific, the St. Louis & San Francisco, and the Missouri, Kansas & Texas are defendants in this proceeding. Defendants directed attention to their poor financial condition, but introduced no data on this point. This feature would be of more importance in a proceeding affecting many rates.

It is testified for complainant that transportation conditions do not justify a higher rate from Kansas City to Oklahoma City than that under the 1716 scale prior to June 25, 1918, and the scale rate plus 25 per cent thereafter. The haul between the two points is over the main lines of the defendants and transportation conditions are, if anything, more favorable than in the territory for which the 1716 scale was prescribed.

The 1716 scale has been given general application on interstate shipments of fresh meats throughout the southwest without regard

to the volume of the movement between particular points. It was prescribed for application over the lines of many carriers, among them these defendant railroads, in territory where operating conditions are certainly no more favorable than between Kansas City and Oklahoma City. As stated above, rates from Kansas City to points in Arkansas and Louisiana are on that basis, as increased 25 per cent by General Order No. 28 of the Director General. We find:

(1) That defendants have failed to justify the relief sought by the fourth section application, and the latter is denied to the extent that it is here involved.

(2) That the rate assailed on fresh meats in straight carloads, carload minimum weight 20,000 pounds, or in mixed carloads with packing-house products, was unreasonable to the extent that it exceeded 42 cents during the period from February 1, 1913, to June 25, 1918, and thereafter was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed 52.5 cents.

(3) That complainant made shipments as described and paid and bore the freight charges; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that Wilson & Company, Incorporated, is entitled to reparation with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. The claims for reparation should not include the war tax. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

Appropriate orders will be entered.

No. 10232.

COMMERCIAL CLUB OF CARROLLTON, KY.,

v.

DIRECTOR GENERAL, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

Submitted October 20, 1919. Decided December 11, 1919.

Class rates between points in trunk line territory and Carrollton, Ky., based upon the Cincinnati combinations, not shown to be unduly prejudicial to Carrollton and preferential of Madison, Ohio, and other Ohio River cities. Complaint dismissed.

J. V. Norman for complainants.

Nelson W. Proctor and *Frank W. Gwathmey* for Director General.

C. C. Lancaster for Carrollton & Worthville Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner.*

This case was made the subject of a proposed report by the examiner who heard the evidence. Exceptions thereto were filed by complainant. The following is the report of the examiner with such modifications as appeared necessary by our examination of the record and the exceptions filed:

The complaint, brought by an association of merchants and citizens of Carrollton, Ky., alleges that the class and commodity rates in force between Carrollton and points in trunk line territory are unduly prejudicial and afford undue preference and advantage to other cities and towns located on the Ohio River between Cincinnati, Ohio, and Evansville, Ind., particularly Madison and New Albany, Ind., Louisville, Cloverport, Hawesville, Owensboro, and Henderson, Ky., and Evansville. The establishment of rates between Carrollton and points in trunk line territory with relation to the New York-Chicago rates and not in excess of those contemporaneously maintained between Louisville, New Albany, and Madison and the same eastern points is sought. Although commodity rates are attacked in the complaint, it appeared at the hearing that rates had been established on a satisfactory basis on such articles as actually move to or from Carrollton and usually take commodity rates. Therefore the class rates only are in issue here. The rates hereinafter stated are in cents per 100 pounds.

Carrollton is a town of about 3,000 inhabitants, situated on the south bank of the Ohio River midway between Cincinnati and Louisville. It is the terminus of the Carrollton & Worthville Railroad, a short line not under federal control, which extends from Carrollton to Worthville, Ky., a distance of 10 miles. Worthville is on the Cincinnati division of the Louisville & Nashville Railroad 56 miles southwest of Cincinnati and 58 miles northeast of Louisville. Madison, the nearest of the alleged preferred points, is on the north bank of the Ohio River 12 miles west of Carrollton. New Albany is about 5 miles west of Louisville on the Indiana side of the river, and Cloverport, Hawesville, Owensboro, and Henderson are south-bank points distant, respectively, 75 miles, 86 miles, 114 miles, and 143 miles west of Louisville on the Louisville, Henderson & St. Louis Railroad.

Class rates between Carrollton and points in trunk line territory are made by combination on Cincinnati, subject to official classification east of Cincinnati and southern classification west thereof. Inasmuch as proportional rates are maintained on traffic eastbound from Cincinnati while local rates are applied westbound the rates from Carrollton to eastern points are slightly lower than those in the opposite direction. Rates between points in trunk line territory and other cities on the Ohio River between Cincinnati and Evansville served by rail, with the exception of Uniontown, Ky., located a few miles west of Henderson on a branch of the Illinois Central Railroad, are made with relation to the New York-Chicago rates and are relatively lower than the combination rates to and from Carrollton. The extent to which the rates from New York to Carrollton exceed those from New York to other points on the Ohio River west of Cincinnati is disclosed in the following table, which shows also the short-line distances and the percentage relationships of the rates to the New York-Chicago scale:

New York to—	Miles.	Class rates.						Relation to New York-Chicago scale.
		1	2	3	4	5	6	
Carrollton, Ky	817	133	116	90.5	67	59	51.5	.....
Madison, Ind	848	112.5	99	75	52.5	45	37.5	160
New Albany, Ind	869	112.5	99	75	52.5	45	37.5	100
Louisville, Ky	885	112.5	99	75	52.5	45	37.5	100
Cloverport, Ky	940	135	119	90	63	54	45	120
Hawesville, Ky	951	135	119	90	63	54	45	120
Owensboro, Ky	979	135	119	90	63	54	45	120
Henderson, Ky	995	127	112	85.5	61	51.5	43.5	(1)
Cannelton, Ind	976	124	109	82.5	58	49.5	41.5	110
Rockport, Ind	970	124	109	82.5	58	49.5	41.5	110
Evansville, Ind	982	124	109	82.5	58	49.5	41.5	110

[1] Differentials over Evansville.

The rates from New York to Cincinnati and on the first six classes from Cincinnati to Carrollton, which combined produce the through rates to Carrollton, are stated below:

Class	1	2	3	4	5	6
New York to Cincinnati	98	86	65.5	45.5	39	32.5
Cincinnati to Carrollton	35	30	25	21.5	20	19
Through rates	133	116	90.5	67	59	51.5

Class rates between points in central freight association territory and points in trunk line territory are made upon established percentages of the New York-Chicago rates, and all points in central freight association territory, regardless of their proximity to the Ohio River, are accorded the percentage basis. On the other hand, class rates between points in central freight association or trunk line territories and points in southern territory are usually made by combination on one of the Ohio River crossings, except where circumstances have necessitated a different basis. The southern boundary of central freight association territory west of Cincinnati follows the north bank of the Ohio River, crossing over to the south bank at Louisville to include that point. Consequently Madison, New Albany, Cannelton, Rockport, and Evansville, all north-bank points, have rates that correspond with the general adjustment throughout their territory, while rates to and from Carrollton are constructed upon the combination basis. The adjustment at Cloverport, Hawesville, Owensboro, and Henderson, south-bank points on the Louisville, Henderson & St. Louis Railroad west of Louisville, will be hereinafter explained.

Complainants contend that the fact that Carrollton is located on the south bank of the river just outside central freight association territory should not deprive it of the advantages afforded Louisville and points on the north bank which enjoy the trunk line basis. As offering the most striking illustration of the alleged prejudice against Carrollton, and the one that is perhaps the most injurious, they refer to the rates between Madison and New York. Madison is the terminus of a branch line of the Pennsylvania Company, and, as stated, is 12 miles below Carrollton. Class rates between that point and New York have been maintained since 1892 on the basis of 100 per cent of the New York-Chicago rates. Furniture is manufactured at Carrollton and Madison, as well as at other points on the Ohio River, and is sold in competition in trunk line territory. Under the relative adjustments the manufacturer at Madison enjoys lower rates on the inbound material moving on class rates from the east and on the manufactured products shipped back. This is the only illustration of competition referred to on the record. The Louisville & Nashville and the Carrollton & Worthville, serving Carrollton,

argue that they are not responsible for the rates of the Pennsylvania Company at Madison, nor for those at any other point served by lines operating in central freight association territory. They contend that the dissimilarity in conditions arising from the location of Carrollton in southern territory and on a small Kentucky railroad justifies a rate adjustment on a higher level than that obtaining in the more thickly settled territory north of the river.

That the differences in density of population, volume of traffic, and other conditions affecting railroads operating in southern territory and in central freight association and trunk line territories are sufficient to warrant higher rates south of the Ohio River than north thereof has been frequently recognized by the Commission.

This was referred to in *Class and Commodity Rates*, 38 I. C. C., 411, 430, wherein it was said:

> This Commission has frequently commented upon the more favorable traffic conditions obtaining north of the Ohio River than in the territory south of the river resulting from greater traffic density and more favorable operating conditions north of the river, as a reason for the higher plane of rates south of the river.

While the class rates between eastern points and stations on the Cincinnati division of the Louisville & Nashville are not related to the New York-Chicago rates, rates to and from points on the Louisville, Henderson & St. Louis Railroad, which operates south of the Ohio River between Louisville and Evansville, are based either on percentages of the New York-Chicago rates or on differentials over Evansville. The Louisville, Henderson & St. Louis connects at Evansville with carriers operating north of the Ohio River which have fixed rates between New York and Evansville at 110 per cent westbound, and 105 per cent eastbound, of the New York-Chicago rates, and these rates are met by the route through Louisville. The rates between New York and points on the line of the Louisville, Henderson & St. Louis intermediate to Evansville, including Cloverport, Hawesville, Owensboro, and Henderson, mentioned by complainants, are higher than the Evansville rates. Prior to the effective date of the order in *Henderson Commercial Club* v. *I. C. R. R. Co.*, 36 I. C. C., 20, and 42 I. C. C., 196, rates between Henderson and points in central freight association territory and trunk line territory were made on combination of the local rates to and from Evansville. The rates between Evansville and Henderson were then on a scale of 7.5 cents, first class. It was held that that adjustment was unduly prejudicial to Henderson and unduly preferred Evansville to the extent that the rates between Henderson and points in central freight association and trunk line territories exceeded the rates contemporaneously in effect between Evansville and the same points by differentials of more than 3 cents on the first four classes

and 2 cents on fifth and sixth classes. General Order No. 28, issued by the Director General and made effective June 25, 1918, increasing the class rates 25 per cent, had the effect of changing these differentials slightly so that the present rates between Henderson and New York are not those precise amounts higher than the Evansville rates.

Class rates from New York to Owensboro, 29 miles east of Henderson, were established on the basis of 120 per cent of the New York-Chicago rates in 1889, for the reason, as stated by defendants, that that basis approximated the rates then in effect to Evansville plus the local rates from Evansville to Henderson and enabled the Louisville, Henderson & Texas Railway, then predecessor of the Louisville, Henderson & St. Louis, to compete for the movement of traffic to Owensboro and Henderson via Louisville. The same basis was extended to intermediate points on westbound traffic at the instance of northern lines connecting with the Louisville, Henderson & St. Louis at Louisville.

Rates eastbound from intermediate points on that line to New York and other eastern destinations were formerly made on combination and were higher than those applied on traffic westbound. A hearing was had on the application of the carriers to continue to depart from the requirements of the fourth section and by Fourth Section Order No. 6727 of May 29, 1917, relief was granted with the provision that, except from Henderson, the rates from intermediate points to New York and points basing thereon should not exceed 120 per cent of the New York-Chicago rates, which, as stated, was the basis in effect in the opposite direction. Class rates from Henderson to trunk line points were fixed upon the differentials over Evansville previously prescribed in the *Henderson Commercial Club Case*, *supra*.

It will thus be observed that although the rates between New York and Cloverport, Hawesville, Owensboro, and other points directly intermediate to Evansville on the Louisville, Henderson & St. Louis are based on percentages of the New York-Chicago rates, or on arbitraries over the percentage basis, they are higher than the rates in effect on like traffic between New York and Evansville under authority granted by this Commission. The application to continue in effect rates between points on its Cincinnati division and points in central freight association and trunk line territories, which are higher than the rates established by the northern lines on traffic to and from Louisville has not yet been heard.

The record is clear that the circumstances affecting the movement of traffic between eastern points, on the one hand, and Carrollton and points in central freight association territory, where the percentage basis is applied, or intermediate points on the Louisville,

Henderson & St. Louis, on the other hand, are not the same. The defendants can not, therefore, be charged with undue prejudice to Carrollton by failing to maintain rates to and from that point with relation to the New York-Chicago rates, and not in excess of those contemporaneously maintained between eastern points and Louisville, New Albany, and Madison.

The complainants do not challenge the reasonableness of the Carrollton rates or the propriety of their relationship to the rates to and from points on Louisville & Nashville between Cincinnati and Louisville. However, the record discloses an adjustment that is obviously in need of correction. The local rates between Cincinnati and Carrollton are on a scale of 35 cents, first class, and between Cincinnati and Worthville 30 cents, first class, producing a spread of 5 cents. The first-class rate from New York to Carrollton, however, exceeds the corresponding rate from New York to Worthville by 16.5 cents. If a difference of 5 cents is proper in the case of traffic moving locally between Cincinnati and those points, it is manifest that the present spread between the rates on traffic originating at or destined to points beyond Cincinnati is excessive. The explanation offered is that there are no joint class rates between New York or other eastern points and Carrollton and therefore all changes in the rates east and west of Cincinnati have been reflected in the through rates. On the other hand, joint rates are published between eastern points and Worthville and other stations on the Cincinnati division which from New York are approximately equal to the combination of the 68.6-cent scale from New York to Cincinnati, established January 15, 1915, in conformity with the findings in *The Five Per Cent Case*, 32 I. C. C., 325, and the local rates from Cincinnati, plus the increase effected by General Order No. 28. On July 16, 1917, the rates to Cincinnati were increased 15 per cent under permission granted in *The Fifteen Per Cent Case*, 45 I. C. C., 303, but the joint rates to stations on the Louisville & Nashville west of Cincinnati were not correspondingly increased.

Carrollton is entitled to rates to and from New York and other eastern points that do not exceed the rates between Worthville and the same points by more than the amounts which the rates between Cincinnati and Carrollton exceed those between Cincinnati and Worthville and steps should be taken by the defendants to establish such rates without delay.

We find that the class rates on traffic moving between points in trunk line territory and Carrollton are not unduly prejudicial to Carrollton in their relation to rates on like traffic moving between the same eastern points and other cities on the Ohio River between Cincinnati and Evansville.

An order dismissing the complaint will be entered.

No. 10436.

C. D. PARK

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND DIRECTOR GENERAL.

PORTION OF FOURTH SECTION APPLICATION No. 1952.

Submitted November 19, 1919. Decided December 18, 1919.

1. Rates on shelled corn, in carloads, from Columbia, Aspen Hill, and Pulaski, Tenn., to New Orleans, La., not shown to have been unreasonable and complainant not shown to have been damaged by the alleged undue prejudice. Complaint dismissed.
2. Fourth section relief denied.

Perkins Baxter and *J. Shelby Coffey* for complainant.

William A. Northcutt and *Edward D. Mohr* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, *Commissioner:*

Complainant, engaged in buying and selling grain at Columbia, Tenn., under the trade name of Park Brothers, alleges, by complaint seasonably filed, that the rate of 20 cents per 100 pounds charged for the transportation of numerous carloads of shelled corn shipped by way of the Louisville & Nashville Railroad from Columbia, Aspen Hill, and Pulaski, Tenn., to New Orleans, La., during the period from November 30, 1917, to June 7, 1918, was unjust and unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act; also that it was unduly prejudicial under section 3 and in violation of section 4 of the act to regulate commerce in that it exceeded the rate of 15 cents per 100 pounds contemporaneously maintained from more distant points on the Louisville & Nashville Railroad's Nashville, Florence & Sheffield division, hereinafter referred to as the Sheffield division, to New Orleans. Reparation only is sought. Rates are stated herein in cents per 100 pounds and are those in effect prior to June 25, 1918, on which date they were increased pursuant to General Order No. 28, issued by the Director General of Railroads. A proposed report by

the examiner was served on the parties. Exceptions and brief in support thereof were filed by complainant and the parties were subsequently heard on argument.

Columbia is on the Nashville & Decatur division of the main line of the Louisville & Nashville Railroad, 577 miles north of New Orleans. Aspen Hill and Pulaski are also on that division a short distance south of Columbia and take the same rates as Columbia on traffic to New Orleans. The Sheffield division extends 88 miles in a southwesterly direction from Columbia to Tuscumbia, Tenn., and traffic by way of the Louisville & Nashville Railroad from points on this division to New Orleans must move through Columbia.

The 15-cent rate, in effect at the time the shipments moved, from Mount Pleasant, Tenn., and other points on the Sheffield division more distant from New Orleans than is Columbia had its origin in an emergency which existed in 1896. In November, 1896, upon the representations of shippers that there was an immense crop of corn for which there was no market in Tennessee, the defendant carrier established an emergency commodity rate of 15 cents to New Orleans from Columbia and other points on the Nashville & Decatur division. This rate, which was also made applicable from points on the Sheffield division, although no request had been made for its establishment from those points, expired by limitation in the tariff on December 31, 1896.

In January, 1897, following the expiration of the 15-cent rate, the 20-cent commodity rate here assailed was established from the Nashville & Decatur division points to New Orleans, and was continued in force until June 25, 1918. Upon the expiration of the 15-cent rate no commodity rate was published from Sheffield division points to New Orleans, but on August 20, 1901, nearly five years later, through error in tariff compilation the 15-cent rate was reestablished from points on the Sheffield division. It remained in effect nearly seventeen years until June 25, 1918, apparently without having moved any considerable traffic, and without having been brought to the notice of defendants until after the movement of some of the shipments in question when defendants' attention was called to the rate situation by complainant. The reestablishment of the 15-cent rate from the Sheffield division points resulted in an adjustment of rates in contravention of the long-and-short-haul provision of the fourth section, but at the time the shipments moved this situation was protected by an appropriate fourth section application. This application was assigned for hearing with the complaint. The fourth section departures were eliminated on June 25, 1918, as a result of increases made pursuant to General Order No. 28, which provided for the cancellation of the commodity rates on corn and the applica-

tion of wheat rates in lieu thereof, the rate on wheat to New Orleans from Sheffield division points being higher than from points on the Nashville & Decatur division. Defendants offered no justification as to any fourth section departures that might by any possibility exist in the said adjustment.

While the complaint alleges unreasonableness *per se*, the claim for reparation relates solely to shipments which moved prior to June 25, 1918, when the fourth section departures existed. The fourth section of the act, as amended June 18, 1910, contains the following proviso:

> That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Complainant contends that the maintenance of the higher rate from Columbia and the other points of origin than from points on the Sheffield division was not lawful at the time of the passage of the amended fourth section and that, therefore, the defendant carrier could not protect such an adjustment by the application filed with us. We find no merit in this contention. The higher rate from the intermediate points was the lawfully published rate notwithstanding the fact that through inadvertence a lower rate was maintained from the farther distant points. Where a departure from the requirements of the long-and-short-haul provisions of the fourth section of the act exists it is well settled that whether the higher rate from the intermediate point is protected by an appropriate fourth section application filed with us or whether it is unprotected, in order to support an award of reparation the complainant must show that the higher rate charged from the intermediate point and paid and borne by complainant was unreasonable or that it was damaged as a result of a violation of section 3. *Appalachia Lumber Co.* v. *L. & N. R. R. Co.*, 25 I. C. C., 193; *Iten Biscuit Co.* v. *C., B. & Q. R. R. Co.*, 50 I. C. C., 724; 53 I. C. C., 729.

In support of the allegation that the rate charged was unreasonable, complainant cites lower rates on corn, in carloads, contemporaneously in effect for greater distances from Louisville & Nashville stations in northern Illinois and Indiana to New Orleans. Defendants urge that the rates cited were influenced by competitive conditions which did not control in naming rates from Columbia and other points south of the Ohio River to New Orleans, and did not constitute a normal or reasonable *per se* basis of rates. They show that the rates cited and the rate charged on the shipments

were lower, distance considered, than the general level of rates to large grain-consuming markets in the southeast. They cite, among others, rates from Columbia on corn, in carloads, in effect prior to June 25, 1918, of 18 cents to Birmingham, Ala., 160 miles; 23 cents to Columbus, Ga., 317 miles; and to Macon, Ga., 414 miles; also rates from Louisville, Ky., of 23 cents to Birmingham, 392 miles, and 21 cents to Chattanooga, Tenn., 315 miles.

Complainant also contends that he was damaged under section 3 by reason of the lower rate of 15 cents enjoyed by his competitor at Mount Pleasant, 11 miles southwest of Columbia. Mount Pleasant is the principal point on the Sheffield division from which shelled corn is shipped, as the only sheller on that division is located at that point. The corn from Mount Pleasant is of the same general quality as that shipped by complainant, as both Mount Pleasant and Columbia draw their corn from the same general territory. Supply and demand fixed the price of shelled corn at New Orleans, corn from all markets being sold f. o. b. New Orleans. While complainant asserted that he was "practically driven out of the New Orleans market" as a result of his Mount Pleasant competitor's lower rate, he admitted on cross-examination that the lower rate from Mount Pleasant did not prevent him from selling his corn in New Orleans at the market price. Complainant is the largest shipper of shelled corn in that section, handles more corn that any shipper on the Sheffield division, and actually draws some of his corn from Mount Pleasant at a local rate of 6 cents to Columbia. He testified that the natural grain market for corn from Columbia and these other Tennessee points was the southeast, *i. e.*, Georgia, Alabama, Florida, Mississippi, Louisiana, and the Carolinas, to which territory he enjoyed lower rates than his Mount Pleasant competitor; that his "shipments to New Orleans were practically all surplus shipments;" and "that New Orleans was simply used by him as an outlet for surplus shipments."

Complainant urges that his profit would have been greater on the shipments in question if he had enjoyed a rate of 15 cents, but in order to support an award of reparation under section 3 a complainant must show that the loss of profit or other damage claimed was directly and solely due to the lower rate enjoyed by his competitor. Complainant cites cases, including *Mebius & Drescher Co.* v. *Central California Traction Co.*, 42 I. C. C., 599, in which we have awarded reparation on account of undue prejudice where it appeared that the complainant was damaged solely because its freight rates exceeded the rates contemporaneously paid by its competitors and that its competitors controlled the selling price of the commodity shipped. But in the instant case it does not appear that

complainant's competitor at Mount Pleasant, who during the year July 1, 1917, to July 1, 1918, shipped but 15 cars of corn to New Orleans, fixed the price of corn at New Orleans or in any way controlled the market at that place, thus compelling complainant to meet his price. In fact, complainant encountered competition at New Orleans with shelled corn from Memphis, Tenn., at a rate of 9 cents, and would have received the same price for his corn at New Orleans had the rate from Mount Pleasant been the same as or higher than the rate from Columbia, Aspen Hill, and Pulaski. The fact that a competitor may have made or have had an opportunity to make a larger margin of profit by a rate less than a maximum reasonable rate is no proof that his competitor's rate caused complainant damage for which he is entitled to reparation.

We find that the rate assailed is not shown to have been unreasonable and that complainant is not shown to have been damaged by the undue prejudice alleged.

Orders dismissing the complaint and denying fourth section relief will be entered.

No. 10653.

HELENA TRAFFIC BUREAU ET AL.

v.

DIRECTOR GENERAL, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

Submitted November 27, 1919. Decided December 18, 1919.

Rates on horses and mules, in carloads, from Springfield and Lockwood, Mo., and Belleville, Kans., to Helena, Ark., found to have been and to be unreasonable. Reparation awarded and reasonable rates prescribed.

M. W. Martin for complainants.

C. C. P. Rausch for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, *Commissioner:*

By complaint, seasonably filed, on behalf of M. D. Prewitt and Zollie Brush, who operate livery, feed, and sales stables in Helena, Ark., it is alleged that the charges collected by defendants for the transportation over their lines of horses and mules, in carloads, from Springfield and Lockwood, Mo., and Belleville, Kans., to Helena between October, 1916, and February, 1917, were unjust and unreasonable in violation of the act to regulate commerce and that the present rates are in violation of the federal control act. Complainants ask reparation and the establishment, via the route of movement, of reasonable rates for the future. Rates herein shown applied or apply on cars ranging from 29 feet to 36 feet 6 inches in length, inside measurement. The rates for cars of greater lengths were and are proportionately higher and their relationship to the rates per standard car is not attacked. Rates are per car unless otherwise stated.

The shipments moved as routed by complainants, eight from Lockwood and seven from Springfield over the St. Louis-San Francisco Railroad to Nettleton, Ark., thence Missouri Pacific Railroad to Helena, Ark., three from Belleville over the Chicago, Rock Island & Pacific Railway to Kansas City, the St. Louis-San Francisco to Nettleton, thence Missouri Pacific to Helena. There were and are no applicable joint rates via these routes. The components of the

combination rates legally applicable were, Springfield to Nettleton $47; Lockwood to Nettleton $51; Belleville to Kansas City $40; Kansas City to Nettleton $66; Nettleton to Helena 28 cents per 100 pounds. Charges were ultimately collected approximately on the basis of these rates, there being small undercharges or overcharges on various shipments.

Complainants contend that the rates charged were unreasonable to the extent that they exceeded $70 from Springfield and Lockwood and $110 from Belleville, erroneously quoted by defendants' agent at Helena before the shipments moved and contemporaneously in effect from Springfield via the Missouri Pacific direct, or via the St. Louis-San Francisco to Memphis, Tenn., thence Yazoo & Mississippi Valley Railroad; from Lockwood via the latter route; and from Belleville via the Chicago, Rock Island & Pacific to Kansas City, thence Missouri Pacific direct, or Frisco to Memphis and Yazoo & Mississippi Valley beyond. The rate from Belleville was based on $40 to Kansas City and $70 beyond. Pursuant to General Order No. 28 of the Director General of Railroads the rate of $70 from Springfield, Lockwood, and Kansas City to Helena by way of Memphis was increased on June 25, 1918, to $85, the present rate.

The rates charged yielded in average 23.6 cents, 33.4 cents, and 36.6 cents per car-mile from Belleville, Lockwood, and Springfield, respectively. The average earnings on basis of the rates claimed would have been about 16.5 cents, 24 cents, and 21 cents per car-mile, respectively. The evidence offered in complainants' behalf shows that the present rate of $85 from Springfield and Lockwood is substantially higher, distances considered, than the intrastate rates maintained by defendants between points in Arkansas, the interstate rates of the St. Louis-San Francisco between points in Kansas and Missouri, on the one hand, and points in Arkansas and Oklahoma, on the other, or the rates from St. Louis, Mo., to Helena and Memphis.

The route through Nettleton is 26 miles shorter than that through Memphis, obviates crossing the Mississippi River by bridge at Memphis and by car ferry at Helena, and affords quicker and more satisfactory service. On behalf of defendants Missouri Pacific and St. Louis-San Francisco it is conceded that the route through Nettleton was and is a reasonable and proper route, and willingness was expressed to establish joint rates applicable thereto on the same basis as that now in effect over other routes.

It is well settled that the misquotation of a rate or the fact of there being a lower rate over other available routes affords no basis for an award of reparation. But, upon the facts of record, it appears, and we so find, that the rates applicable from Springfield and Lockwood,

and from Kansas City on shipments originating at Belleville, were and that the present rates are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the rates contemporaneously applicable on horses and mules, in carloads, from Springfield and Lockwood, and from Kansas City on shipments originating at Belleville, to Helena via the Missouri Pacific Railroad direct from Springfield and Kansas City or via the St. Louis-San Francisco Railroad from Springfield, Lockwood, and Kansas City to Memphis and the Yazoo & Mississippi Valley Railroad beyond. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation. An appropriate order will be entered.

No. 10431.

DIAMOND ALKALI COMPANY

v.

DIRECTOR GENERAL, BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY, ET AL.

Submitted October 17, 1919. Decided December 17, 1919.

Rates legally applicable on coal from Cowan, Pa., to Alkali, Ohio, found to have been unreasonable prior to March 27, 1917. Undercharges waived. Complaint dismissed.

Nuel D. Belnap, *William W. Collin, jr.*, *John S. Burchmore*, and *Luther M. Walter* for complainant.

Havens, *Mann*, *Strang & Whipple* and *William Ainsworth Parker* for Director General, Buffalo, Rochester & Pittsburgh Railway Company, and Baltimore & Ohio Railroad Company.

Frank Van Slyck for the Fairport, Painesville & Eastern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, DANIELS, AND EASTMAN.

MEYER, *Commissioner:*

Complainant is engaged in the manufacture of soda ash, caustic soda, and other soda products, at Alkali, Ohio, a point on the Fairport, Painesville & Eastern Railroad. During the period from January, 1917, to December, 1918, numerous carload shipments of coal from Cowan, Pa., were received by complainant at Alkali on which it paid rates that are alleged to have been and to be unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act to regulate commerce. Reparation in the sum of $10,000 is sought and the Commission was asked to prescribe reasonable and nonprejudicial rates for the future.

A proposed report was prepared by the examiner and served upon the parties. The complainant filed exceptions to the examiner's conclusion that the rates assailed were not shown to have been unreasonable. The allegations of unjust discrimination and undue prejudice under sections 2, 3, and 4 of the act, and the prayer for rates for the future, were not stressed upon argument, and as complainant is primarily interested in reparation there remains for consideration only the claim for reparation under section 1.

In *Diamond Alkali Co.* v. *F., P. & E. R. R. Co.*, 53 I. C. C., 549, in which the order was served after the service of the proposed report in this case, we found that the Fairport, Painesville & Eastern is a common carrier; and that from August 15, 1916, the rates on shipments of coal and other commodities between complainant's plant at Alkali and points in other states had been, were, and for the future would be, unjust and unreasonable and unduly prejudicial to the extent that they exceeded or might exceed the rates contemporaneously applicable on like traffic between Painesville or Fairport, Ohio, and such points, and awarded reparation.

The award in that case covers and includes the shipments upon which reparation is claimed here. Therefore we shall assume that reparation upon these shipments will be paid under the order in the above case to the extent of 10 cents per net ton, and consider the rates on coal from Cowan to Painesville, Fairport, or Fairport Harbor as having been applicable also to Alkali.

Cowan is on the Buffalo, Rochester & Pittsburgh Railway, 20.4 miles east of Butler, Pa. Prior to March 27, 1917, the shipments moved over the rails of the initial carrier to Butler; Baltimore & Ohio Railroad to a point of interchange with the Fairport, Painesville & Eastern 2 miles north of Painesville; and over the latter line 1.4 miles to Alkali. Since that date the initial carrier has hauled the shipments between Butler and New Castle Junction over the rails of the Baltimore & Ohio under trackage agreement. The distance from Cowan to Alkali is 141.2 miles. All rates are hereinafter stated in amounts per net ton.

At the time the first shipments moved and until March 27, 1917, no joint rate was published, the charges thereon up to Painesville being assessed at a combination rate of 95 cents, 25 cents to Butler and 70 cents from Butler to Painesville. The 25-cent factor from Cowan to Butler was not on file with this Commission, but was published as a local rate of the Buffalo, Rochester & Pittsburgh on coal from mines at Cowan. The correct rate prior to the above date was $1.40, composed of a distance scale rate of 70 cents from Cowan to Butler and 70 cents to Painesville. Apparently such shipments were undercharged.

On March 27, 1917, a joint interstate rate of 95 cents was published from Cowan to Painesville and Fairport Harbor which remained in force until July 1, 1917, at which time it was increased to $1.10, and again increased to $1.40 on June 25, 1918, pursuant to authority in the Director General's Order No. 28. On and since March 27, 1917, the charges up to Painesville appear to have been correctly assessed at the joint rates. The Fairport, Painesville &

Eastern's local charge of 10 cents above mentioned was collected upon all the shipments, in addition to the charges to Painesville.

Coal rates from Cowan to Cleveland, Ohio, have been generally on the basis of Pittsburgh rates. Rates to Fairport Harbor and Painesville have been adjusted with reference to rates to Cleveland and other Lake Erie ports. Complainant contends that the rate association of Cowan with Pittsburgh is illogical from a geographical standpoint, inasmuch as Cowan is on the extreme limit nearest to destination of a very large group, and furthermore because coal produced at that point is of a lower grade than that of the Pittsburgh district. It is said that the coal constituting complainant's shipments more nearly approaches the quality of coal originating in the so-called Bruin group, including Bruin, Petrolia, Karns, Chicora, Chewton, Rock Point, Evans City, and Buhls, Pa. Bruin is 23 miles north of Butler on the Baltimore & Ohio. Traffic therefrom to Painesville would move through Butler and thence to destination over the same route as do shipments from Cowan, except that the entire haul is via the Baltimore & Ohio. The total distances from Cowan and Bruin to Painesville are 137.8 miles and 140 miles, respectively. During the periods when joint rates from Cowan to Painesville were 95 cents and $1.10, respectively, the corresponding rates from Bruin were 70 cents and 85 cents. The present rate from Cowan is $1.40; from Bruin, $1.15.

Complainant contends that its shipments from Cowan are entitled to rates no greater than from Bruin as the total distance from Cowan is less, and with the exception of a 23-mile haul to Butler, the transportation service is the same as on traffic from Bruin; that on local shipments to Butler the rate from Bruin was greater than from Cowan, tending to show that the difference in transportation conditions is favorable to Cowan. Testimony was submitted by complainant to demonstrate that the unfiled local rates in effect during the several periods from Cowan to Butler and New Castle Junction were reasonable and normal rates, in opposition to defendants' contention that those rates were subnormal and established to meet competition.

Defendants assert that rates from points in the Pittsburgh district are normally made the same to Fairport Harbor as to Cleveland, Ohio, in order to place coal at Fairport Harbor at rates no greater than maintained by other lines to Cleveland from the same producing territories. The Fairport Harbor rates apply to Painesville. In establishing rates to Fairport Harbor, Cowan was given a lower rate because of the existence of the combination rates on Butler, defendants observing the measure of the unfiled local rate to Butler and the local rate thence to Fairport Harbor. With

respect to traffic to Cleveland and other points west the rates to Fairport Harbor and Cleveland were and are as follows:

Via New Castle Junction, from—	To Fairport Harbor.				To Cleveland.			
	Miles.	In effect—			Miles.	In effect—		
		Mar. 27, 1917, to June 30, 1917.	July 1, 1917, to June 24, 1918.	June 25, 1918, to date.		Mar. 27, 1917, to Sept. 8, 1917.	Sept. 10, 1917, to June 24, 1918.	June 25, 1918, to Aug. 15, 1919.
Cowan	141	$0.95	$1.10	$1.40	149	$1.00	$1.15	$1.50
Dayton	162	1.05	1.20	1.50	171	1.00	1.15	1.50
Summit	164	1.05	1.20	1.50	173	1.00	1.15	1.50
Yatesboro	165	1.05	1.20	1.50	174	1.00	1.15	1.50

It will be observed that while rates from Dayton, Summit, and Yatesboro, points on the same line as Cowan, were 5 cents greater to Fairport Harbor than to Cleveland prior to June 25, 1918, the rate from Cowan to Fairport Harbor was 5 cents less. On that date the rates from Dayton, Summit, and Yatesboro were made the same to both points while the Cowan rate to Fairport Harbor became 10 cents lower than the rate to Cleveland.

The average distance from the group in which Bruin is located is 118 miles to Fairport Harbor. Bruin is the most remote coal-producing point in this group, being 142 miles distant. Defendants state that the rates from this group were established with reference to rates from competitive mines on other lines in the same rate group to Lake Erie ports. The route of the Baltimore & Ohio to the lake from this territory is longer than those of the Pennsylvania lines and the Bessemer & Lake Erie. The average distance to Cleveland via the Pennsylvania lines is 105 miles, to Ashtabula 98 miles; over the Bessemer & Lake Erie to Ashtabula the average distance is 94 miles. Defendants contend that the rates from Cowan to Fairport Harbor and Painesville are not fairly comparable with the Bruin rate, which was originally established under the pressure of competition. The present rate from Cowan to Painesville of $1.40 represents an increase of 15 cents over the original joint rate of 95 cents pursuant to authority granted in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and a further increase of 30 cents per net ton under authority of General Order No. 28.

We find that of the rates assailed those in effect from Cowan to Painesville or Fairport, prior to March 27, 1917, were unjust and unreasonable to the extent that they exceeded the subsequently established rate of 95 cents per net ton, but those since that date are not shown to have been or to be unreasonable. The defendants are authorized to waive the undercharges, and an order dismissing the complaint will be entered.

No. 10196.

WALTER A. ZELNICKER SUPPLY COMPANY
v.
MISSOURI PACIFIC RAILROAD CORPORATION IN ILLINOIS ET AL.

Submitted May 12, 1919. Decided December 17, 1919.

Two carloads of rails and fastenings from Banks, Ark., to East St. Louis, Ill., found not to have been misrouted; charges thereon not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

John D. Fidler for complainant.
James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in manufacturing, buying, and selling rails, equipment, and miscellaneous supplies at St. Louis, Mo. By complaint filed May 6, 1918, and later amended, it alleges that the rates charged on two carloads of old rails and fastenings, shipped May 26, 1917, from Banks, Ark., to East St. Louis, Ill., were unreasonable and in violation of the long-and-short-haul clause of the fourth section of the act to regulate commerce. Reparation only is asked. The Director General of Railroads is not a party defendant. Rates will be stated in cents per 100 pounds except as otherwise noted.

The shipments moved over the Warren & Ouachita Valley Railway to Warren, Ark., and thence by the lines of the Missouri Pacific Railroad system to destination. One carload shipment weighing 65,100 pounds, consisted of rails; the other, weighing 93,300 pounds, of rails and fastenings. Charges on the two shipments were collected in the sum of $197.10 and $286.89, respectively. The rates legally applicable were a fifth-class rate of 12 cents from Banks to Warren, and commodity rates of $3.75 per long ton on rails and $3.75 per net ton on fastenings, straight or mixed carloads, from Warren to destination. The carload of rails was overcharged $10. The separate weights of the rails and fastenings in the other carload are not shown of record, and the correctness of the charges on this shipment can not be verified.

The Warren & Ouachita Valley Railway extends from Warren to Banks, a distance of 16 miles. At Banks it connects with the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island. This carrier at the time of movement maintained joint rates of $3.75 per long ton on rails and $3.75 per net ton on fastenings, straight or mixed carloads, to East St. Louis from points on the Warren & Ouachita Valley Railway from Warren up to but not including Banks. The Rock Island carried the latter point only as a local station on its line, from which it published the same rates. The Warren & Ouachita Valley had in effect a charge of $2 per car for switching at Banks between industries located on its line and the Rock Island, absorption of which by the latter road was provided for in its tariffs, so that if the Warren & Ouachita Valley had switched these shipments to the Rock Island at Banks the latter's rates from Banks would have been legally applicable.

Complainant contends that the shipments were misrouted. In support of this contention it introduced at the original hearing an affidavit by a partner in M. Kaplon & Sons, the consignor firm, stating that at the time of shipment he instructed the agent of the Warren & Ouachita Valley to route the cars via the Rock Island and the St. Louis & San Francisco Railway, but that said agent would not accept the shipments via such route, and issued instead bills of lading routing the shipments via Warren and the St. Louis, Iron Mountain & Southern Railway. Copies of the bills of lading show, in the space provided for routing, "% Sou." This affidavit was afterward challenged by the Warren & Ouachita Valley, which was not represented at the hearing, and the case was set for further hearing, at which the agent at Banks who acted there jointly for the Warren & Ouachita Valley and the Rock Island, testified that he had no personal dealings with the member of the consignor firm who made the affidavit with reference to these shipments, but that an agent of the consignor had instructed him to secure the cars for these shipments from either of the above carriers and to give the shipments to the road which furnished the cars first; that accordingly he had placed orders for the cars with both carriers; that they were furnished and spotted for loading by the Warren & Ouachita Valley, whereupon he canceled the order placed with the Rock Island; and as nothing further was said about the routing at the time this agent called for the bills of lading, he, in compliance with their previous understanding, routed the shipments by way of the Warren & Ouachita Valley. No further evidence was introduced by the complainant. An affidavit substantially similar to the one previously referred to and executed by the same party was presented. We find that complainant has not established misrouting.

Complainant concedes that the rates of $3.75 per ton were reasonable from Warren but insists that they would also have been reasonable to apply from Banks, and points to the fact that in connection with the Rock Island the rates of $3.75 per ton were extended to apply to all stations on the Warren & Ouachita Valley between Banks and Warren. Defendants, on the other hand, contend that the rates of $3.75 per ton were very low, although they offered no evidence in support of this contention, and insisted that the mere fact that over the competing route in connection with the Rock Island these rates were applied from stations on the Warren & Ouachita Valley affords no basis for condemning the rates over the route of movement.

We find that the rates assailed have not been shown to have been unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 5070.[1]

COMPTON COAL COMPANY ET AL.

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted May 14, 1919. Decided December 18, 1919.

Rates charged for the transportation of coal in carloads from Castle Gate, Helper, Price, and Sunnyside, Utah, to Boise, Nampa, and Caldwell, Idaho, not shown to have been unreasonable. Complainants not shown to have been damaged by the discrimination alleged. Complaints dismissed.

G. M. Stephen for complainants.

E. N. Clark, *J. G. McMurry*, *George H. Smith*, and *John O. Moran* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

Complainants in this consolidated proceeding are dealers in coal and other commodities at Boise, Nampa, and Caldwell, Idaho. By complaints filed July 25, August 5 and 19, and September 9, 1912, as amended, they allege that the rates charged by defendants for the transportation of numerous carload shipments of bituminous coal from Castle Gate, Helper, Price, and Sunnyside, Utah, to Boise, Nampa, and Caldwell during the two-year periods immediately preceding the filing of the complaints, were unreasonable and unjustly discriminatory. Reparation only is asked. Rates herein are carload rates in amounts per ton of 2,000 pounds, and are those in effect prior to June 25, 1918, on which date they were increased pursuant to General Order No. 28, issued by the Director General of Railroads.

At the hearing complainant moved that the Director General be made a party defendant. He was not a necessary party defendant, and it is unnecessary to pass upon this motion.

The points of origin with the exception of Sunnyside, are situated on the Denver & Rio Grande Railroad between Mounds and Colton, Utah. Sunnyside is the terminus of a branch line of the Denver &

[1] This report also embraces No. 5070 (Sub-No. 1) Central Lumber Company et al *v.* Same; No. 5070 (Sub-No. 2) Union Fuel & Feed Company *v.* Same; and No. 5070 (Sub-No. 3) Stone Lumber Company *v.* Same.

Rio Grande extending from Mounds. The destinations are on the Oregon Short Line Railroad. The shipments in controversy moved over these lines through Pocatello, Idaho, the average distance being about 361 miles. For some time prior to December 27, 1911, the rate on bituminous coal from Castle Gate, Helper, Price, and Sunnyside to Boise, Nampa, and Caldwell was $4.25. Effective December 27, 1911, the rate from Sunnyside was made $4.35, or a differential of 10 cents over the other points of origin. This differential is still maintained and is not in issue. Effective May 4, 1912, the $4.25 rate was reduced to $4. Effective August 1, 1912, it was again made $4.25, and on August 15, 1912, was reduced to $3.75. This rate and a rate of $3.85 from Sunnyside were established following our decision in *Consolidated Fuel Co.* v. *A., T. & S. F. Ry. Co.*, 24 I. C. C., 213, and are the rates upon the basis of which reparation is asked. In support of their contention complainants rely principally upon our decision in *Idaho Commercial Clubs* v. *O. S. L. R. R. Co.*, 18 I. C. C., 562, and the *Consolidated Fuel Co. Case*, *supra*. In *Idaho Commercial Clubs* v. *O. S. L. R. R. Co.*, *supra*, the rate of $4 on bituminous coal from Rock Springs, Kemmerer, and Diamondville, Wyo., to destinations in Idaho, including Boise, Nampa, and Caldwell, was attacked. We found that the rate was unreasonable to the extent that it exceeded $3.50. In compliance with our order in that case the latter rate was established on August 15, 1910, and was in effect during the period when the shipments involved in the instant case moved. Up to the time of the effective date of the order in the case last cited, rates from the Wyoming and Utah coal fields to Boise, Nampa, Caldwell, and certain other Idaho destinations were constructed on the basis of a 25-cent differential against the Utah fields, but when the defendants complied with our order therein the rates on coal from Utah remained unchanged, with the result that the 25-cent differential previously existing was increased. In the *Consolidated Fuel Co. Case*, *supra*, we considered the relation of rates on coal between mines in Utah and mines in the Rock Springs field in Wyoming to consuming markets on the Oregon Short Line and its connections in Idaho, Montana, Washington, and Oregon, and found that—

> the present differentials against the Utah district where they exceed 25 cents a ton result in rates that are unduly discriminatory, and that a differential of not exceeding 25 cents a ton against Utah coal will fix a reasonable relation of rates as between the Utah and Rock Springs fields to all points in the territory in question reached through Pocatello.

In that case no reparation was asked or awarded. As hereinbefore shown, on August 15, 1912, the defendants complied with our order therein by reducing the rate from the Utah mines.

Complainants' contention that our conclusions in the cases cited constitute a basis for a finding that the rates assailed in the instant case were unreasonable is not warranted by the reports in these cases.

In further support of their contention that the rates complained of were unreasonable the complainants submit comparisons of rates on coal ranging from $2.45 to $3.75 between points in various western and southwestern states for distances of from 353 to 632 miles. There is no supporting evidence, however, of a definite character relating to conditions of transportation that would render them of value for comparative purposes.

In support of their charge of discrimination complainants insist that they were damaged because their competitors at points on the Union Pacific and Oregon Short Line in Wyoming enjoyed lower rates to the Idaho destinations in question, but there is no evidence of damage in any specific amount by reason of the lower rates from the Wyoming mines. In discrimination cases it must be shown not only that the discrimination alleged to exist operated to the injury of the complainants, but it must also be shown that they have been damaged and the amount thereof. *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S., 184.

We find that the rates attacked are not shown to have been unreasonable and that the unjust discrimination alleged is not shown to have damaged complainants. An order will be entered dismissing the complaints.

No. 10456[1]

FRAME & COMPANY

v.

DIRECTOR GENERAL, ANN ARBOR RAILROAD COMPANY, ET AL.

Submitted November 6, 1919. Decided December 18, 1919.

Rate on ginger and on pepper, cassia, and nutmegs, unground, in carloads, from Seattle and Tacoma, Wash., to New York, N. Y., and various other points in eastern defined territory found to have been unreasonable. Reparation awarded.

L. G. Macomber for Frame & Company.

A. E. Beck for other complainants.

B. W. Scandrett for Director General and defendant lines under federal control.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

These complaints, seasonably filed, allege that unreasonable rates were charged by defendants on various carloads of ginger and of pepper, cassia, and nutmegs, unground, shipped in July, August, September, and October, 1918, from Seattle and Tacoma, Wash., to New York, N. Y., Chicago, Ill., St. Louis, Mo., Toledo, Ohio, Minnesota Transfer, Minn., Montreal, Canada, and Baltimore, Md. Reparation only is sought. No. 10456 was filed by Ernest Lee Prior, George M. Frame, and Steven Ewen, copartners transacting business at New York under the firm name of Frame & Company, and relates to 1 carload of ginger, 13 carloads of pepper, and 21 carloads of cassia, also a small quantity of nutmegs included in 1 of the cars of pepper. Sub-No. 1 was filed by McCormick & Company, a corporation engaged in business at Baltimore, and relates to 6 carloads of pepper and 2 of cassia. By amendment upon the hearing, Arnhold, Karberg & Company and the American Trading Company, corporations with offices at New York, were made additional complainants in Sub-No. 1, it being alleged as to each that it is the party to the transportation record entitled to the reparation prayed on 1 carload each of the

[1] This proceeding embraces No. 10456 (Sub-No. 1), McCormick & Company et al. *v.* Director General, Baltimore & Ohio Railroad Company, et al.

shipments of cassia embraced in that proceeding. Rates are stated herein in amounts per 100 pounds.

Complainants are importers of spices and those considered here originated in the Orient. Apparently, the ginger was shipped "in the root," in bags; the cassia, in sticks, whole or broken, in bales or cases; the pepper, in berry form, in bags; and the nutmegs in "whole form," in barrels or boxes. Under the western classification then in effect, a fourth-class rating applied on ginger, and on spices, not ground, including cassia, nutmegs, and pepper, in carloads, and the legal rates were the fourth-class rates of: $2.815 to New York and Baltimore; $2.59 to Chicago; $2.50 to St. Louis; $2.69 to Toledo; $2.29 to Minnesota Transfer; and $3.315 to Montreal. The shipments moved over defendants' lines and the applicable charges were generally collected, though apparently 3 shipments to New York were undercharged.

Prior to June 25, 1918, an import rate of 80 cents applied from both the California and north Pacific coast terminals to each of the destinations on pepper, cassia, ginger, dry or preserved, and nutmegs, in carloads, originating in specified foreign countries. A domestic commodity rate of $1.25 contemporaneously applied from the California terminals to each of those destinations on certain spices, including pepper, whole or ground, cassia, ginger, and nutmegs, but the then applicable domestic rates from Seattle and Tacoma were the fourth-class rates. On that date, as a result of General Order No. 28 of the Director General of Railroads, the import rate was canceled and the respective domestic rates were increased, the resulting rates on both import and domestic traffic being $1.565 from the California terminals and the fourth-class rates above shown from Seattle and Tacoma. It is testified for defendants that in the absence of controlling conditions, the class basis is the normal basis on this traffic, though admittedly, if there had been any necessity for a domestic rate from the north Pacific coast ports during the period the $1.25 rate was maintained from California ports, the disparity would have been corrected, and effective October 22, 1918, subsequent to the movement of complainants' shipments, the $1.565 rate was also made effective to the destinations in question from the north-coast points, including Seattle and Tacoma. As hereinafter explained, complainants based their purchase price of certain of these spices on the import rate, but they ask reparation on the basis of the $1.565 rate applicable from California terminals at the time of movement and subsequently established from Seattle and Tacoma.

In *Woolson Spice Co.* v. *Director General*, 53 I. C. C., 698, decided since the hearing in the present proceeding, the Commission found

that the fourth-class rate of $2.69 on pepper, unground, in carloads, shipped during August, 1918, from Seattle to Toledo was unreasonable to the extent that it exceeded $1.565, and awarded reparation. Nothing appears in the present record to warrant a different conclusion with respect to that rate or other rates assailed in this proceeding.

The pepper was generally purchased on a delivered basis at Pacific ports, and the cassia and ginger on a delivered basis at the respective interior destinations. It appears, however, that while the respective complainants under the amendment in Sub-No. 1 bore the transportation charges on the shipments of cassia included in that proceeding, the other respective complainants actually bore the rail transportation charges only in excess of those which would have accrued at the import rate on the other shipments of cassia and on one shipment of pepper, and that they bore the entire rail transportation charges on the remaining shipments of pepper; also that on the shipment of ginger, Frame & Company bore only one-half of the alleged excessive charges.

The Commission should find that the rates assailed were unreasonable to the extent that they exceeded $1.565 per 100 pounds; that the respective complainants made the shipments as described and, subject to the qualification noted respecting the shipment of ginger, that they bore the excessive charges thereon and have been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found to have been reasonable, and are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified, the Commission should consider the entry of an order awarding reparation.

The reparation asked includes an amount equal to the war-revenue tax on the alleged unreasonable portion of the freight charges collected, but following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, the Commission is without power to order refund of war taxes or to include the amount so paid in an award of reparation.

DANIELS, *Commissioner:*

The foregoing, with certain minor changes, is the report of the examiner as served upon the parties. No exceptions were filed thereto. Upon consideration of the record we are of opinion that the recommendations of the examiner as to the disposition of the

case should be followed. We accordingly adopt the foregoing as our own report and find that to the extent indicated the rates assailed were unreasonable and complainants are entitled to reparation. Upon receipt of a reparation statement prepared in the manner suggested, we will consider the entry of an order awarding reparation. Subsequent to the hearing, Frame & Company submitted details of an additional carload shipment of cassia alleged to have been forwarded by way of the Great Northern Railway from Seattle to Minnesota Transfer and to have been charged the $2.29 rate. The details of this shipment may be included in the reparation statement if accompanied by appropriate proof in the form of an affidavit that the freight charges on this shipment were paid and borne by Frame & Company.

No. 10444.

EXCELSIOR POWDER MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

Submitted August 27, 1919. Decided December 18, 1919.

1. Former equality in import rates between Holmes, Mo., and Joplin, Mo., for the transportation of carload shipments of nitrate of soda from Pensacola, Fla., and New Orleans, La., ordered restored.
2. Rate of 30 cents per 100 pounds for the transportation of carload shipments of nitrate of soda from Pensacola and New Orleans to Holmes, not shown to be unreasonable under section 1 of the act.
3. Reparation denied.

S. C. Bates for complainant.
C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

In this proceeding the import rates on nitrate of soda in carloads from Pensacola, Fla., and New Orleans, La., to Holmes, Mo., are alleged to be and to have been unreasonable and unduly prejudicial in comparison with the contemporaneous rates on nitrate of soda from the same points to Joplin, Mo., and other points in the Joplin group. Reparation is prayed. Rates are stated in cents per 100 pounds.

Holmes is 18 miles southeast of Kansas City and is served by the St. Louis-San Francisco and Kansas City Southern railways. Joplin is 155 miles south of Kansas City, on the lines of the Kansas City Southern, Missouri Pacific, Missouri, Kansas & Texas, Atchison, Topeka & Santa Fe, Missouri & North Arkansas, and Joplin & Pittsburg railways. The other points in the Joplin group are within about 30 miles of Joplin, and are Carl Junction, Mo., and Turck, Kans., on the St. Louis-San Francisco and Joplin & Pittsburg railways; Atlas, Mo., Dynamite Spur, Mo., and Independent Powder Spur, Mo., on the Missouri Pacific Railway; and Pittsburg, Kans., on the St. Louis-San Francisco, Missouri Pacific, Kansas City Southern, Atchison, Topeka & Santa Fe, and Joplin & Pittsburg railways. The Missouri Pacific, which does not reach Holmes, was not made a party to the complaint.

Nitrate of soda is imported from Chile, and the rates apply from ship side. The rates are the same from all the Gulf ports, but most of the complainant's traffic enters this country through the ports of Pensacola and New Orleans. The commodity was worth about $60 a ton before the war. During the war it brought about $80 a ton.

This commodity comprises about 75 per cent of the composition of black powder, which the complainant makes, and which it sells in direct competition with manufacturing points in the Joplin group and elsewhere in various states. The output of the complainant's plant is shipped largely to Kansas, Missouri, Arkansas, Oklahoma, and Texas; some goes to Montana and Wyoming.

Prior to April 15, 1917, the rate on nitrate of soda from Pensacola and New Orleans to both Holmes and Joplin was 30 cents. Effective that date the rate to Joplin was reduced to 20 cents, but the 30-cent rate to Holmes was continued in effect. Effective June 25, 1918, the present rates of 25 cents to Joplin and 37½ cents to Holmes were established. It is now proposed by the carriers, according to their statement at the hearing, to publish rates of 38 cents to Joplin and 40 cents to Holmes.

According to correspondence between the complainant and the carriers, which the complainant introduced in evidence at the hearing, it was the intention of the carriers, prior to the hearing, to place Holmes and Joplin on the same basis as soon as necessary arrangements could be made.

Following is a statement, taken from exhibits presented by the complainant, of the ton-mile yield of the rates in effect from Pensacola and New Orleans to Holmes, both before and after the general increase in rates of June 25, 1918, together with a statement of what the ton-mile yield would have been during the same periods had the Joplin basis of rates been in effect. The figures are based upon the distances over actual routes of movement of the shipments on which reparation is claimed.

	Miles.	A.[1]	B.[2]	C.[3]	D.[4]
		Mills.	*Mills.*	*Mills.*	*Mills.*
From Pensacola	1,116	5.393	3.599	6.743	4.499
From New Orleans	942	6.423	4.282	8.029	5.352
Average	1,029	5.913	4.120	7.386	5.150

[1] A. Ton-mile yield prior to June 25, 1918, under 30-cent rate actually charged.
[2] B. Ton-mile yield that would have resulted under 20-cent rate then applicable to Joplin group.
[3] C. Ton-mile yield subsequent to June 25, 1918, under 37½-cent rate actually charged.
[4] D. Ton-mile yield that would have resulted under 25-cent rate then applicable to Joplin group.

The defendants refer in this connection to the Commission's finding in *Arkansas Fertilizer Co.* v. *St. L., I. M. & S. Ry. Co.*, 25 I. C. C., 645, that the rate of 20 cents from New Orleans to Little Rock,

Ark., on nitrate of soda, was not unreasonable. Based on the short-line distance of 456 miles the ton-mile yield there was 8.77 mills. Based on an average distance of 473 miles over the shorter routes, as alleged by the complainant in that case, the ton-mile yield was 8.45 mills. The Commission there remarked, however, that the "actual ton-mile earnings of the defendants via the routes over which complainant's shipments moved were less than the figures indicated above."

The defendants also refer to *Fort Smith Traffic Bureau* v. *St. L. & S. F. R. R. Co.*, 13 I. C. C., 651, decided in 1908, in which the Commission said that a rate of 27 cents on nitrate of soda from New Orleans to Fenn, Ark., 4.5 miles from Fort Smith, Ark., for a distance of approximately 700 miles, had not been shown to be unreasonable. The question there, however, was primarily one of tariff interpretation.

Complainant calls attention to the present rate of 37½ cents from Pensacola and New Orleans to Holmes, and the present rates from the same ports to Kansas City, on certain other commodities, as follows:

	A.[1]	B.[1]	C.[2]	D.[2]
	Cents.	*Mills.*	*Cents.*	*Mills.*
Chalk or whiting	34	6.800	37.5	7.614
Crude glycerin or spent lye	26.5	5.300	37.5	7.614
Blackstrap molasses	26.5	5.300	37.5	7.614
Salt	22.5	4.500	37.5	7.614
Sisal—ixtle or istle	31.5	6.300	37.5	7.614
Burlap bags	35	7.000	37.5	7.614
Cement	18.5	3.700	37.5	7.614
Fuller's earth	28	5.600	37.5	7.614
Pig lead	28	5.600	37.5	7.614
Brewers' rice	31.5	6.300	37.5	7.614
Kainit	29	5.800	37.5	7.614
Potash, carbonate of, and caustic	36.5	7.300	37.5	7.614
Potash, muriate and sulphate of	29	5.800	37.5	7.614
Soda—ash, caustic, silicate	32.5	6.500	37.5	7.614

[1] A–B. Rate and ton-mile yield (based on average distance) on articles named from Pensacola and New Orleans to Kansas City.
[2] C–D. Rate and ton-mile yield (based on average distance) on nitrate of soda from Pensacola and New Orleans to Holmes.

The defendants state that the established basis for making the rates to both Holmes and Joplin is the combination on St. Louis, Mo., using to St. Louis a rate controlled by the adjustment from the eastern ports, in this instance Baltimore; that is to say, the rate from the Gulf ports is the same as the rate from Baltimore. It appears, however, that prior to April 15, 1917, when the rate was 30 cents to both Holmes and Joplin, this basis was departed from, and that the rate was made first to Holmes and then extended to Joplin. The defendants refer in this connection to the fact that over certain routes from the Gulf ports Joplin is directly intermediate to Holmes, and that the Holmes rate was applied as maximum to Joplin. The

St. Louis combination basis was again departed from in the publication of the 20-cent rate to Joplin on April 15, 1917. This is said by the defendants to have been due to the independent action of the Missouri Pacific in publishing from New Orleans, which port it reaches by trackage rights over the line of the Texas & Pacific from Alexandria, La., a rate of 20 cents to Joplin, in order to place Joplin on a better competitive relationship with Fayville, Ill., a point on the Missouri Pacific near Thebes, Ill., to which the rate was 17 cents. The rates of 38 cents to Joplin and 40 cents to Holmes, which the defendants now propose to establish, present still another departure from the St. Louis combination basis, inasmuch as they are to be made differentials of 6 and 8 cents, respectively, over a proposed rate of 32 cents to Fayville.

The defendants call attention to the fact that at the time the Joplin rate was reduced to 20 cents to meet the competition of the Missouri Pacific, the rate of 28 cents to Fenn, Ark., and Patterson, Okla., since increased to 35 cents, other competing points in the manufacture of black powder, was not reduced. The record also shows, however, that the rate to Turck, Kans., already referred to as one of the Joplin group points, was at that time reduced to the Joplin basis, although, like Holmes, it was not affected by the competition of the Missouri Pacific. There are two explanations given for this in the record: One, that of the witness for the St. Louis-San Francisco, is that the location of Turck in the network of tracks of all lines in and about the Joplin district made almost imperative the inclusion of Turck in the Joplin group. The other, that of the witness for the Illinois Central, is that the Joplin rate was extended to Turck in error, the failure to correct which the witness was unable to account for.

There appears to be no sound reason why Holmes should not be restored to the basis it enjoyed prior to April 15, 1917, as a point taking the Joplin group rate. The differential of 2 cents which the defendants now propose against Holmes, in the publication of rates of 38 cents to Joplin and 40 cents to Holmes, is based upon an alleged difference of 72 miles against Holmes in the average distances to Joplin and Holmes from Pensacola and New Orleans over routes of actual movement. The complainant asserts that the difference in average distance is only 40 or 50 miles. But whether one or the other, a difference in distance to such an extent does not in itself, in view of the other facts of record, warrant a higher rate to Holmes than to Joplin, when the average distance to Holmes, if the defendants' own figures are correct, is as much as 907 miles. The defendants themselves are not adhering to close refinements in relative distances in their proposal to make the new rates to both

Joplin and Holmes on the basis of differentials over Fayville instead of more nearly on the basis of relative distance which obtained when, as will be recalled, the rate to both Joplin and Holmes was 30 cents and the contemporaneous rate to Fayville was 17 cents.

It is testified on behalf of the defendants that the 6-cent differential over Fayville to Joplin is now proposed because it represents "the difference which the powder people in the Joplin section said was necessary, or said was all they could stand over Fayville and properly meet the competition at Fayville." It would seem not unreasonable to require that the former equality of rates be restored as between Holmes and Joplin, especially when, under the established basis of the St. Louis combination for the construction of the rates to Holmes and Joplin, the rate to Joplin, but for the application of the Holmes rate as maximum under the fourth section, would be higher than to Holmes.

The record does not warrant a finding of unreasonableness. The rates are shown to be and to have been unduly prejudicial to Holmes, but the record does not warrant an award of reparation. The complainant's showing as to damage is practically limited to testimony purporting to show that the complainant initially paid and finally bore the freight charges. There is no showing of actual damage, such as the decisions of the Supreme Court of the United States in *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S., 184, and *Mitchell Coal Co.* v. *Penna. R. R. Co.*, 230 U. S., 247, require.

DANIELS, *Commissioner:*

The above with certain minor changes is the report of the examiner. No exceptions were filed to the statement of facts therein contained. Complainant has excepted to the conclusions of the examiner that the rates attacked are not shown to be unreasonable and that the record does not warrant an award of reparation on the finding of undue prejudice. We have examined the rate comparisons introduced by the complainant, and while the per-ton-mile revenue afforded by the rates attacked is somewhat higher than the per-ton-mile revenue afforded by other rates set forth by complainant, we are not convinced that the rates to Holmes are shown to be or to have been unreasonable. We are of opinion and find that the rates complained of are unduly prejudicial to Holmes, and that defendants should establish and maintain on nitrate of soda from Pensacola and New Orleans to Holmes import rates which do not exceed the rates contemporaneously maintained to points within the Joplin group. The record does not afford a basis for an award of reparation on the finding of undue prejudice.

An appropriate order will be entered.

No. 10455.

KARCHMER IRON & METAL COMPANY

v.

DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 692.

Submitted August 13, 1919. Decided December 18, 1919.

Rate of 51 cents per 100 pounds for the transportation of scrap iron, in carloads, from Texarkana, Ark.-Tex., to Chicago, Ill., found to have been unreasonable to the extent that it exceeded 30 cents, the rate contemporaneously in effect from Texas common points to Chicago. Reparation awarded.

H. C. McCord for complainant.

James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

Complainants are I. Karchmer and L. M. Karchmer, copartners engaged in the scrap-iron business at Oklahoma City, Okla., under the trade name of Karchmer Iron & Metal Company. By complaint filed February 11, 1919, as amended, they allege that the rates charged on two carloads of scrap iron, shipped in April, 1918, from Texarkana, Ark.-Tex., to Chicago, Ill., were unreasonable and unduly prejudicial in violation of sections 1, 3, and 4 of the act to regulate commerce and section 10 of the federal control act. Reparation only is asked.

Charges based on the applicable minimum of 40,000 pounds were collected on each of the shipments; on the one in the sum of $176, exclusive of war taxes, at a rate of 44 cents per 100 pounds, and on the other in the sum of $204, exclusive of war taxes, at a rate of 51 cents per 100 pounds, plus a reconsignment charge of $5 which is not in issue. The rate legally applicable was the class C rate of 51 cents, minimum 40,000 pounds. The first shipment, therefore, was undercharged in the total sum of $28.

Complainant asks reparation on basis of a commodity rate of 30 cents contemporaneously in effect on like traffic from Texas common points to Chicago.

Shipments from Texas common points in some instances pass through Texarkana to Chicago. That portion of Fourth Section Application No. 692, filed by F. A. Leland, agent, which protected this departure from the long-and-short-haul rule of the fourth section was accordingly set for hearing with the complaint. Effective June 25, 1918, under General Order No. 28, of the Director General of Railroads, the class C rate from Texarkana to Chicago was increased to 64 cents, and the commodity rate from Texas common points to 37.5 cents. Effective February 24, 1919, the rate from Texarkana to Chicago was reduced to 32.5 cents, which, in view of the 37.5-cent rate from the farther distant Texas common points, apparently removed the departure from the long-and-short-haul rule of the fourth section. The departure from that rule, however, still remains when the minima are considered in connection with the rates. The former rates from both Texarkana and Texas common points carried a minimum of 40,000 pounds. That is also the minimum applicable under the present 37.5-cent rate from Texas common points, but the minimum applicable under the present rate of 32.5 cents from Texarkana is 50,000 pounds. Therefore with respect to cars on which the charges are based on the minimum weight from the respective points of origin the total charge per car from Texarkana would be $12.50 in excess of the total charge per car from Texas common points. No justification for the departure from the provisions of the fourth section was introduced.

The shipments moved over the line of the Kansas City Southern from Texarkana to Kansas City, thence over the line of the Chicago & Alton. A shorter mileage can be figured by using the average distances of the St. Louis-Southwestern and Missouri Pacific from Texarkana to St. Louis and the route of the Chicago & Alton beyond. A statement of rates and earnings over the respective routes is shown below, together with similar data from Texas common points and Oklahoma City, Okla., to Chicago:

To Chicago from—	Miles.	Route.	Rate.	Ton-mile.	Car-mile.[1]
			Cents.	*Mills.*	*Cents.*
Texarkana	670	[2] 1	51	10.5	21.0
Texarkana	810	[3] 2	51	12.6	25.2
Texas common points	1,084	[4] 3	30	5.5	11.1
Oklahoma City	827	[5] 4	27	6.5	13.0

[1] Based on 40,000 pound minimum.
[2] Route 1: Kansas City Southern-Kansas City-Chicago & Alton.
[3] Route 2: Average St. Louis Southwestern-Missouri Pacific to St. Louis, Chicago & Alton beyond.
[4] Route 3: Using average of 800 miles to St. Louis, as found by the Commission in the *Texas Common Point Case*, 26 I. C. C., 528, and the Chicago & Alton beyond.
[5] Route 4: St. Louis-San Francisco to St. Louis and Chicago & Alton beyond.

The ton-mile yield under a 30-cent rate from Texarkana to Chicago would be about 6.18 mills over the route of movement and about

7.4 mills over the route above designated as No. 2. The car-mile revenue based on a minimum of 40,000 pounds would be 12.37 and 14.81 cents, respectively.

No substantial evidence of undue prejudice was introduced.

We find that the rate legally applicable on the shipments was unreasonable to the extent that it exceeded 30 cents; that complainants made the shipments as described and paid and bore the charges thereon; and that they have been damaged in the amount of the difference between the charges collected and those that would have accrued at the rate herein found reasonable and are entitled to reparation in the sum of $140, with interest. Collection of the undercharges may be waived. The fourth section application is denied to the extent that it is involved.

Appropriate orders will be entered.

DANIELS, *Commissioner:*

The foregoing is substantially the report of the examiner served upon the parties. No exceptions to the report have been filed. Its conclusions appear to us to be proper and we adopt it as the report of the Commission.

No. 9189.[1]

PORTLAND TRAFFIC & TRANSPORTATION ASSOCIATION ET AL.

v.

BOSTON & MAINE RAILROAD, DIRECTOR GENERAL, ET AL.

Submitted December 2, 1918. Decided December 26, 1919.

1. Rates on O'Cedar polish and various wax furniture and floor polishes, in metal cans, in boxes, in less than carloads, from Chicago, Ill., Racine, Wis., Cincinnati, Ohio, and Boston, Mass., to Portland, Oreg.; and on O'Cedar polish in metal cans, in boxes, and in glass, in boxes, on mops, and on mop handles, in less than carloads and in straight carloads, from Chicago, Ill., to Pacific coast terminals; found to have been unreasonable. Reparation awarded.
2. Absence of mixed carload rates on O'Cedar polish, mops, and mop handles not found to have caused unreasonable charges in the past, but reasonable maximum basis prescribed for the future.

William C. McCulloch, *John S. Burchmore*, and *Luther M. Walter* for complainants.

Charles Donnelly, *B. W. Scandrett*, and *Blaine Hallock* for transcontinental lines.

R. C. Fyfe for Western Classification Committee.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

These cases are related and will be dealt with in one report.

In No. 9189 the complaint, filed September 12, 1916, as amended, alleges that the rates charged by the defendants on 16 less-than-carload shipments of O'Cedar polish and various wax preparations from Chicago, Ill., Racine, Wis., Cincinnati, Ohio, and Boston, Mass., to Portland, Oreg., between December 8, 1914, and June 1, 1916, inclusive, were unreasonable and unlawful, in violation of sections 1 and 6 of the act to regulate commerce. The prayer is for reparation only.

In No. 9086 the complaint, filed August 3, 1916, attacks the rates charged by the defendants on shipments of O'Cedar polish in glass,

[1] This report also embraces No. 9086, Channel Chemical Company *v.* Atchison, Topeka & Santa Fe Railway Company et al.

boxed, and in metal cans, boxed, mops and mop handles, in less than carloads and in straight and mixed carloads, from Chicago to Pacific coast terminals during the two-year period preceding the filing of the complaint, alleging that they were unreasonable, unjustly discriminatory, and unduly prejudicial. It asks for reparation and the establishment of rates of $1.30 on less than carloads and $1 on straight or mixed carloads.

By supplemental complaints filed subsequent to the hearings on the original complaints the Director General of Railroads was made a party defendant, and in No. 9086 the present rates were brought into issue. The Director General answered but no further hearing was asked or had. Rates are stated hereinafter in amounts per 100 pounds.

No. 9189.

The shipments referred to in No. 9189 were all packed in metal cans, in boxes, and moved to Portland over the defendants' lines. Essential details of some of them follow:

To Portland from—	Dates of shipment.	Commodity.	Rates charged.
	1916.		
Chicago	June 1	O'Cedar polish	[1] $2.45
Cincinnati	Apr. 4	Boyle's Old English wax	[1] 2.52
Boston	Apr. 27	Wiley's waxine	[1] 2.65
Racine	Apr. 4	Johnson's prepared wax	[2] 2.95
Do	Apr. 15	do	[1] 2.45

[1] Third class governed by the western classification.
[2] Second class governed by the western classification.

The remaining shipments consisted of Johnson's prepared wax and Johnson's powdered wax for dance floors from Racine, and Boyle's Old English wax from Cincinnati, upon which charges were collected at the first-class rates of $3.40 from Racine, and $3.50 from Cincinnati, both governed by the western classification.

The principal ingredients of Boyle's Old English wax and Johnson's prepared wax are paraffin and ceresine wax, held in paste form with gasoline or a similar petroleum distillate. Wiley's waxine is a liquid consisting principally of paraffin oil, turpentine, and ceresine wax or a similar heavy wax. Johnson's powdered wax for dance floors is paraffin wax, Kanaka or Japan wax, with a base of talc or similar substance. O'Cedar polish is the trade name applied to a mixture consisting of about 85 per cent mineral or vegetable oil and 15 per cent secret compound, including an adhesive and coloring matter. With the exception of Johnson's powdered wax for dance floors, which is used exclusively on floors, all these articles are advertised and sold as a polish for furniture, floors, or automobiles. None contains an abrasive. The desired polish is produced by treat-

ing the surface to be polished with a thin coating of the preparation and then applying friction.

For some years prior to November 15, 1914, an any-quantity commodity rate of $1.30 on "furniture and floor polishes, n. o. s., boxed," applied on O'Cedar polish and the wax preparations from all of the points of origin to all Pacific coast terminals, including Portland. On that date this rate was canceled, the tariffs specifically stating that there would thereafter be "no through commodity rates (carload or less than carloads, as the case may be) in effect on these articles." Prior to February 20, 1915, the western classification rated "furniture polish, in glass or earthenware, packed in barrels or boxes, or in metal cans, in boxes," any quantity, first class. On that date this rating was canceled and ratings of first class, less than carload, and fourth class, carload, minimum 36,000 pounds, were established and are still in effect on "furniture polish, n. o. i. b. n.," in the same packages. At the time the shipments moved, December 8, 1914, to June 1, 1916, there were no specific ratings in the western classification on floor polish or on floor or furniture wax. An any-quantity rating of first class was provided on "wax, n. o. i. b. n., vegetable or other than vegetable, in boxes." On January 25, 1917, after the shipments moved, ratings of second class, less than carload, and fourth class, minimum weight 30,000 pounds, carload, were established on "wax, floor or furniture, dry or paste, in metal cans or pails, in barrels or boxes." It also appears that on April 16, 1917, a less-than-carload commodity rate of $2 was established from all transcontinental groups to north coast terminals, including Portland, on—

Compounds, polishing and buffing, n. o. s., except liquid, boxed.
Floor Oils, and Floor Wax, in metal cans boxed.
Polish, furniture in bulk in barrels.
Polish, metal, liquid, in barrels or boxes.

This same rate had been made effective to California terminals on May 15, 1916. On March 15, 1918, it was increased to $2.14 from Chicago and Racine, $2.30 from Cincinnati, and $2.50 from Boston. Under General Order No. 28 of the Director General of Railroads, these rates were further increased, on June 25, 1918, to $2.675, $2.875, and $3.125, respectively.

The class rates during the period of movement from the points of origin in question were as follows:

To Pacific coast terminals from—	Classes.			
	1	2	3	4
Chicago	$3.40	$2.95	$2.45	$2.07
Racine	3.40	2.95	2.45	2.07
Cincinnati	3.50	3.03	2.52	2.15
Boston	3.70	3.20	2.65	2.25

Prior to July 15, 1915, commodity rates of 80 cents, carload, and $1.30, less than carload, applied from all transcontinental groups to Pacific coast terminals on:

Soap, soap chips, and soap powder, in packages, and scouring, washing, polishing, and sweeping compounds, n. o. s. (not including liquid compounds, except when in tin cans, boxed); also washing crystals, min. c. l. wt. 40,000 pounds.

This item is hereinafter termed the soap item. On July 15, 1915, the less-than-carload rate of $1.30 was published in three items, one of which follows:

Polishing compounds, n. o. s. (not including liquid compounds, except when in metal cans, boxed), in boxes or barrels.

Effective December 30, 1916, to the north coast terminals, the carload rate was increased to 90 cents and less than carload to $1.55. On September 15, 1917, this less-than-carload rate was canceled and reference made to the less-than-carload commodity rate of $2, effective April 16, 1917, which has already been mentioned. A similar change had been made to California terminals on May 15, 1916.

The complainants urge that the articles shipped were compounds of two or more ingredients used in producing a polish or giving luster, and therefore were "polishing compounds" within the meaning of that description in the defendants' tariffs. The defendants state that these articles are not "polishing compounds"; that the shipments of wax preparations should have been charged the first-class rates, either as "furniture polish" or as "wax, n. o. i. b. n., vegetable or other than vegetable"; and that the third-class rate was charged on the shipment of O'Cedar polish on the theory that it was "petroleum floor oil," but that if it was "furniture polish" the first-class rate was legally applicable. It is their position that "polishing compounds," as these words are used in their transcontinental tariffs, mean articles like Bon Ami, Sapolio, and "Brilliantshine," which polish by friction or abrasion, rather than the more expensive articles like furniture polish, which leave a filmy coating or dressing on the surfaces to which they are applied. Defendants say this is apparent from the fact that the description "polishing compounds" was originally included in the soap item with scouring, washing, and sweeping compounds, and is still carried in the same item with those articles in the case of carload rates. It was further pointed out that when defendants canceled the commodity rate on "furniture and floor polishes" the notice of cancellation specifically stated that there would be "no through commodity rates (carload or less-than-carload, as the case may be) in effect on these articles," so that it could not have been contemplated that they should thereafter move

upon the commodity rates named in the soap or "polishing compounds" items.

We find that the term "polishing compounds," as used in defendants' tariffs, did not embrace O'Cedar polish or the wax preparations referred to; that Johnson's powdered wax for dance floors, as the name implies, is a floor wax; that O'Cedar polish is a furniture or floor polish; that Johnson's prepared wax, Boyle's Old English wax, and Wiley's waxine may be correctly described either as floor wax or as furniture polish; and that first-class rates were legally applicable upon all the shipments of these articles upon which reparation is sought in No. 9189.

Inasmuch as the rates applicable on these shipments represent increases since January 1, 1910, the burden of justifying them is upon defendants.

Defendants state that the any-quantity rate of $1.30 in effect prior to November 15, 1914, was subnormal, having been established to meet water competition; that the class basis was established, not because of any decrease in water competition, but to avoid substantial decreases in the rates to intermediate territory which otherwise would have been necessary under our decisions in the *Intermountain Rate Cases;* and that this was merely a return to the normal basis, which had long applied to intermediate territory. They observe that the class rates are not attacked as such, nor is it contended that the articles are improperly placed in the classification.

Complainants cite numerous articles, including a number of liquids, rated first or second class, less than carloads, when in glass or earthenware, boxed, or in metal cans, boxed, which were, at the time complainants' shipments moved, accorded less-than-carload commodity rates of $2 or slightly higher, and carload commodity rates of from $1 to $1.25 from Chicago to Pacific coast terminals. Among these articles are liquid cement; liquid belt dressing; curriers' harness, shoe or leather dressing; patent or proprietary medicines, liquid; drugs, or medicines, n. o. s.; champagne; liquors, n. o. s.; and ink. While the transportation conditions surrounding these articles are not shown, neither is there any explanation by defendants of the great disparity between the rates thereon and the rates on the articles here under consideration.

We find that the rates legally applicable on the shipments in question have not been justified on this record. We further find that on the shipments of the various wax preparations the rates legally applicable were unreasonable to the extent that they exceeded $2 from Racine, $2.15 from Cincinnati, and $2.34 from Boston; and that the rate legally applicable on the shipment of O'Cedar polish from Chicago was unreasonable to the extent that it exceeded $2.35. In reach-

ing these conclusions we have taken into consideration, in addition to complainants' comparisons, the circumstances that the burden of proof is upon the defendants, that defendants were themselves uncertain as to the rates applicable during the period of movement, and that subsequently at a time when the costs of transportation were rapidly advancing a less-than-carload commodity rate of $2 was established on "floor oils and floor wax, in metal cans, boxed" and on "furniture polish in bulk in barrels" from all transcontinental groups to Pacific coast terminals. This rate did not cover O'Cedar polish, in metal cans, boxed; that commodity is rated one class higher than furniture and floor waxes in less than carloads; and the record does not convince us that it is unreasonable to charge a somewhat higher rate than on the waxes. Upon the facts of record we think $2.35 would have been a reasonable maximum rate on the shipment of O'Cedar polish.

No. 9086.

As stated, this complaint, filed August 3, 1916, attacks the rates charged by defendants on shipments of O'Cedar polish in glass, boxed, and in metal cans, boxed, and on shipments of mops and mop handles, in less than carloads and in straight and mixed carloads, from Chicago to Pacific coast terminals during the two-year period preceding the filing of the complaint.

The facts in regard to the rates on O'Cedar polish have already been stated. We find that the rates legally applicable prior to November 15, 1914, on the shipments in question in No. 9086, were not unreasonable, but that the rates legally applicable thereafter during the reparation period have not been justified on this record. We further find that the legally applicable rates on and after November 15, 1914, were unreasonable to the extent that they exceeded $2.35 on less-than-carload shipments and to the extent that they exceeded $1.30 on straight carload shipments.

The mops referred to in No. 9086 are of cotton yarn saturated with O'Cedar polish, and have metal fixtures or centers attached. They are shipped in metal cans, in double-faced corrugated strawboard boxes which are in accordance with the requirements and specifications of the classification.

Early in 1913, to California terminals, and early in 1914, to north coast terminals, the then existing commodity rates of $1.25, minimum weight 24,000 pounds, carloads, and $1.75, less than carloads, on mops in bundles or crates from Chicago were increased to $1.50, minimum 20,000 pounds, and $2, respectively. On November 15, 1914, the commodity rates were canceled, leaving applicable on mops in bundles, boxes, barrels, or crates, in carloads and less than carloads, respectively, the third-class rate of $2.45,

minimum weight 20,000 pounds, and the second-class rate of $2.95, which rates were assessed on complainant's shipments. The defendants' justification for these increased rates is the same as for those on O'Cedar polish and the wax preparations. The previously existing commodity rates of $1.50 and $2 do not appear low, however, in comparison with the rates contemporaneously maintained by defendants on other commodities as set forth in an exhibit filed by complainant. The record indicates that complainant's mops will load to at least 30,000 pounds in a 36-foot car and complainant asks for a carload rate of $1 with a minimum weight of 36,000 pounds. Based upon 2,239 miles, the distance from Chicago to Seattle as shown of record, and the minimum weight of 20,000 pounds, the rate of $1.50 earned 13.4 cents per car-mile, while upon the basis of a weight of 30,000 pounds the earnings would be 20.1 cents per car-mile. Very few of complainant's shipments to the Pacific coast are in carload lots.

Upon the record before us we are of the opinion and find that the rates legally applicable on complainant's shipments of mops prior to November 15, 1914, were not unreasonable, but that the rates on and after that date have not been justified, and that they were unreasonable to the extent that they exceeded $1.50, minimum 30,000 pounds, in straight carloads, and $2 in less than carloads.

The mop handles referred to in No. 9086 are merely plain sticks of wood, threaded at one end. They are shipped in bundles. Prior to November 15, 1914, the defendants maintained from Chicago to Pacific coast terminals rates of $1.25, minimum weight 30,000 pounds, carloads, and $1.75, less than carloads, on wooden mop handles with or without metal fixtures attached, in boxes, crates, or bundles, and rates of 85 cents, minimum weight 40,000 pounds, carloads, and $1.35 less than carloads, on wooden mop handles, without metal fixtures, in boxes, crates, or bundles. The $1.35 rate was applicable on complainant's less-than-carload shipments made prior to that date. On November 15, 1914, the less-than-carload commodity rates were canceled, leaving applicable the third-class rate of $2.45 on shipments in bundles, and the fourth-class rate of $2.07 on shipments in boxes or crates. The carload rates of 85 cents and $1.25 remained in effect, but the minimum in connection with the latter was increased to 36,000 pounds. Effective October 18, 1915, commodity rates of $1.50, carloads, minimum weight 16,000 pounds, and $2 less than carloads, were established.

Here also the defendants offer the same justification for the increase effected November 15, 1914, in the less-than-carload rates as they offered with respect to the rates on O'Cedar polish and the wax preparations.

We find that the defendants have not justified the less-than-carload rate in effect from November 15, 1914, to October 17, 1915, and that it was unreasonable to the extent that it exceeded $1.35. We do not find that the less-than-carload rates in effect prior to November 15, 1914, and on and after October 18, 1915, or the carload rates in effect during the period covered by the claim for reparation were unreasonable.

Defendants' tariffs do not provide mixed carload rates on O'Cedar polish, mops, and mop handles, from Chicago to Pacific coast terminals and complainant in No. 9086 asks that such a provision be established, because it sometimes ships those articles together.

Upon the facts of record we find that the absence of such a provision did not result in unreasonable charges on past shipments referred to in the complaint, but that for the future charges on mixed carloads of the following articles, viz, furniture polish, mops, and mop handles, shipped in one day by one consignor from Chicago to one consignee at one Pacific coast terminal, will be unreasonable to the extent that they exceed the charges at the highest rate and highest minimum weight, or actual weight if greater, applicable on a straight carload of any of the articles contained in the shipment. An appropriate order will be entered.

REPARATION.

We further find that complainants in Nos. 9086 and 9189 made shipments and paid and bore charges thereon as described; that they have been damaged to the extent that the charges paid exceeded those which would have accrued under the rates herein found reasonable; and that they are entitled to reparation, with interest, on shipments not barred. The exact amount of reparation due can not be determined on this record, and the complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified, we shall consider the entry of an order awarding reparation.

PRESENT RATES.

Since the hearings in these cases there have been comprehensive and radical readjustments in transcontinental rates, due in part to our decisions in the *Intermountain Rate Cases* and in part to the great changes in transportation conditions caused by the war. Upon the present record it is impossible for us to determine with fairness to all parties just and reasonable rates for the future. The record will be held open 90 days from the date of the service hereof to enable complainants to file petitions for further hearings with respect to the justness and reasonableness of the present rates.

No. 10460.

C. S. BUTTERFIELD COMPANY

v.

NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY, DIRECTOR GENERAL, ET AL.

Submitted May 21, 1919. Decided December 19, 1919.

Demurrage charges at East St. Louis, Ill., on one carload of lumber shipped from Tyler, Miss., to St. Louis, Mo., found to have been illegal. Reparation awarded.

Luther L. Tyler for complainant.

Carl Fox for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

By this complaint, seasonably filed, complainant, a corporation engaged in the lumber business at Brookhaven, Miss., seeks reparation for alleged unreasonable demurrage charges collected for the detention at East St. Louis, Ill., of a carload of lumber shipped January 9, 1917, from Tyler, Miss., to St. Louis, Mo. The legality of the assessment of demurrage is the point in issue.

The shipment was delivered to the New Orleans & Northeastern Railroad at Tyler, consigned to complainant at St. Louis, care Missouri Pacific Railroad, without intermediate routing. Complainant seasonably advised the latter carrier of the consignment, with instructions to notify Philip Gruner & Brothers Lumber Company, St. Louis, upon arrival of the car and to accept its orders for disposition; and that company on January 18, 1917, instructed delivery to a St. Louis customer at its switch on the Missouri Pacific.

The car arrived at East St. Louis over the Mobile & Ohio Railroad, hereinafter called defendant, January 24; two days later it was received by the Terminal Railroad Association of St. Louis for delivery at St. Louis to the Missouri Pacific; and on the following day, January 27, it was returned to defendant by the Terminal Railroad with notation on the waybill: "M&O for yard route and B/O." It is explained that "yard route" called for the insertion of the exact delivery point on the Missouri Pacific, and that "B/O" meant

bad order, in that the loading was too wide to pass permanent structures on the Terminal Railroad's tracks. The car was held on defendant's tracks, the Terminal Railroad having no available storage space, and, upon expiration of the free-time allowance, demurrage was assessed thereon until the car was released, February 16, 1917, at 6 o'clock p. m.

On January 28 the defendant's agent mailed a notice addressed to complainant at St. Louis, that the car was being held for street address and asking for disposition. This notice was returned to defendant, as complainant had no office in St. Louis. Through the originating carrier complainant was notified that the car was so detained because the consignee was unknown, and on February 5 wrote defendant that instructions for delivery had been given to the Missouri Pacific. No notice was sent to the Missouri Pacific until February 6, when defendant asked that line if it would accept the shipment and protect charges to St. Louis. On the following day the Missouri Pacific replied that it would accept the car only after payment of all charges including its switching. On February 8 defendant's agent advised complainant that the Missouri Pacific would accept the car only free of all charges, including accrued demurrage, which complainant declined to pay. On February 16 the Philip Gruner & Brothers Lumber Company paid the freight charges and $66 demurrage charges, and, the load having been reconditioned in the meantime, the shipment was delivered to its customer in St. Louis. The charges were finally paid and borne by complainant.

The Missouri Pacific did not concur in the joint rate from Tyler to St. Louis, published by the participating carriers, including the Terminal Railroad, and under which the shipment moved, but the defendant provided for the absorption of the switching charges of the Missouri Pacific at St. Louis. In the tariff publishing the rate reference was made to individual-line tariffs for applicable terminal charges, etc. St. Louis-East St. Louis Terminal Switching Lines' tariff, to which the Missouri Pacific, among others, was a party, provided:

> No loaded or empty car will be accepted for switching unless accompanied by regular waybill or switch bill showing final destination and consignee.
>
> * * * * * * *
>
> When handled for switching revenue only, cars will not be accepted from connecting lines with charges to collect. Switching charges must be prepaid.

A dismissal of the complaint is urged upon the grounds that when the shipment reached St. Louis on the Terminal Railroad tracks the obligation of the bill of lading was discharged; that the shipment thereupon became subject to the above-quoted tariff provisions as the conditions of its acceptance by that line; that the Missouri Pacific

was not a party to the joint rate or the transportation undertaking thereunder; and that the matter of delivery should have been taken up with the carrier issuing the bill of lading or with a line participating in the joint rate.

In several cases we have condemned the assessment of demurrage on shipments moving under joint rates and withheld from delivering lines, parties to those rates. *Este Co.* v. *A. C. L. R. R. Co.*, 34 I. C. C., 469; *Trexler Lumber Co.* v. *N. O. & N. E. R. R.*, 49 I. C. C., 121. So far as the shipping public is concerned the effect of a switching absorption is to establish a joint rate. *National Dock & Storage Warehouse Co.* v. *B. & M. R. R.*, 38 I. C. C., 643, 650. The shipment was billed through from point of origin to the Missouri Pacific tracks. The carriers to St. Louis contracted to make the delivery specified in the bill of lading, and the assessment of demurrage charges at a point intermediate to the delivery point was unauthorized and unlawful.

We find that the demurrage charges assailed were unlawfully collected; that complainant paid and bore the said charges; that it has been damaged in the amount thereof; and that it is entitled to reparation from the Mobile & Ohio Railroad Company in the sum of $66, with interest.

An order awarding reparation will be entered.

No. 10577.

BENNETT GRAIN COMPANY ET AL.

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.

Submitted October 21, 1919. Decided December 19, 1919.

Charges on coal, in carloads, from Benton and Zeigler, Ill., to points in South Dakota and Minnesota, reconsigned en route to other points in those states, found to have been unreasonable to the extent that they exceeded the joint through rates plus a reconsignment charge. Reparation awarded.

Stanley B. Houck for complainants.

O. W. Dynes for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The complainants, Bennett Grain Company and Hayes Lucas Lumber Company, corporations engaged in the coal business at points in South Dakota and Minnesota, by complaint filed April 16, 1919, allege that unreasonable charges were collected by defendants on six carloads of coal shipped during the period between January 28, 1918, and July 3, 1918, both inclusive, from Benton and Zeigler, Ill., to various points in South Dakota and Minnesota, and reconsigned to other points in those states. Reparation is asked. Rates throughout this report are stated in amounts per ton of 2,000 pounds.

Various details respecting the shipments are shown in the following table:

Date of shipment.	Point of origin.	Original billed destination.	Final destination.	Joint rate from point of origin to final destination.
Jan. 26, 1918	Benton, Ill.	Rochester, Minn.	Owatonna, Minn.	[1] $2.45
Jan. 28, 1918	Benton, Ill.	Rochester, Minn.	Waseca, Minn.	[1] 2.45
Feb. 7, 1918	Benton, Ill.	Rochester, Minn.	Owatonna, Minn.	[1] 2.45
Mar. 1, 1918	Zeigler, Ill.	Crandon, S. Dak.	Hitchcock, S. Dak.	[1] 3.40
July 3, 1918	Benton, Ill.	Winnebago, Minn.	Jackson, Minn.	[2] 3.33
July 3, 1918	Benton, Ill.	Okabena, Minn.	Flandreau, S. Dak.	[2] 3.63

[1] Moved I. C. R. R. to Peoria, Ill., and C. & N. W. Ry. beyond.
[2] Moved I. C. R. R. to Mendota, Ill., and C., M. & St. P. Ry. beyond.

The tariffs of the Chicago & North Western and the Chicago, Milwaukee & St. Paul railways, hereinafter called the North Western and the Milwaukee, respectively, permitted reconsignment of coal at the through rate plus a reconsigning charge of $5 per car when reconsigned after the arrival of the car at the original billed destination and $2 per car when reconsigned prior thereto, or when orders therefor were placed with the defendants' agents in time to permit the necessary instructions to be given to yard employees prior to arrival of the car at the billed destination. An exception was made on traffic received from or originating at points on the Illinois Central Railroad, the tariffs in such cases providing for the application of the combination of local rates to and beyond the reconsigning point, plus these reconsigning charges. It appears that the various reconsignments were effected on the rails of the respective delivering carriers and that the charges were based on the respective combination rates, to and from the reconsigning points, plus reconsigning charges of $2 on some of the cars and $5 on others. While it is evident that the charges collected were materially in excess of those which would have accrued at the respective joint rates, plus the applicable reconsigning charges, we are unable to check the legality of the charges collected as the record neither discloses at what points the shipments were reconsigned nor what reconsigning charge properly applied on them.

If the reconsignments had been effected while on the rails of the Illinois Central the joint rates would have applied, and the exception in the delivering carriers' tariffs with respect to traffic in which the Illinois Central participated appears to have been the result of a disagreement between the carriers over the adjustment or settlement of the divisions and charges. By amendments to their tariffs, subsequent to the movements in question, effective November 15, 1918, as to the North Western, and January 2, 1919, as to the Milwaukee, the exceptions were eliminated and the general basis of reconsigning charges in effect when the shipments moved was made applicable to shipments received from or originating on the Illinois Central. The amended rules have since remained in effect and no serious effort was made upon the hearing to justify the lawfulness of the charges assailed.

We find that the charges assailed were unreasonable to the extent that they exceeded those which would have accrued at the respective joint rates hereinabove set forth, plus reconsigning charges on the basis of defendants' present tariff rules; that complainants respectively caused the shipments to be made as described and paid and bore the charges thereon, and that they have been damaged and are entitled to reparation, with interest. The exact amount of repara-

tion due can not be determined on this record, and complainants should prepare and submit to defendants for verification statements showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

Complainants also ask for reparation on account of war taxes collected in excess of those which would have accrued if the joint rates had been applicable. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes, and that we may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

No order for the future is necessary.

No. 9496.

HALEY & LANG COMPANY

v.

AMERICAN EXPRESS COMPANY ET AL.

Submitted July 10, 1919. Decided December 30, 1919.

Rates charged for the transportation of one carload of cherries and one carload of fresh strawberries from White Salmon, Wash., to Sioux Falls, S. Dak., found unreasonable. Reparation awarded.

R. D. Springer for complainant.

W. T. Llewellyn and *C. O. Bailey* for American Express Company.

E. W. Bennett for Northern Express Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the fruit and vegetable business at Sioux Falls, S. Dak. By complaint seasonably filed it alleges that the rate charged by defendants on one carload of strawberries and one carload of cherries, shipped June 13 and July 9, 1913, from White Salmon, Wash., to Sioux Falls, was unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act to regulate commerce. Reparation is asked. The Director General is not a party defendant. Rates will be stated in amounts per 100 pounds.

White Salmon, Wash., is a local point on the Spokane, Portland & Seattle Railway, 75 miles east of Portland, Oreg. The shipments were originally consigned to stations other than Sioux Falls, but were diverted to that point while in transit. They were moved by the Northern Express Company to Oakes, N. Dak., and the American Express Company beyond, a total distance of 1,782 miles. The carload of strawberries weighed 16,200 pounds and the carload of cherries 15,500 pounds. Transportation charges aggregating $887.60 were ultimately collected thereon at the back-haul combination rate of $2.80, composed of 80 cents from White Salmon to Vancouver, Wash., and $2 from Vancouver through White Salmon to destination, legally applicable under defendants' tariffs and rule 5 (d) of

Tariff Circular 19–A. Additional charges for icing and stoppage in transit to partially unload were also collected, but these are not in issue. Effective April 10, 1914, defendants established a rate of $2 on strawberries and cherries from White Salmon to Sioux Falls over the route of movement, and complainant asks reparation upon that basis.

At the time of movement the defendants participated in the $2 rate from ports such as Vancouver and Portland, Oreg., and from interior points such as Wenatchee and Yakima, Wash., to Sioux Falls and other points in the same general territory, and they also applied the $2 rate from White Salmon to a number of South Dakota points other than Sioux Falls.

Defendants stated that prior to the time of movement there had been no shipments of berries from White Salmon to Sioux Falls and that if request had been made in time the $2 rate would have been established prior to the movement of these shipments. They concede that there was no justification for a higher rate from White Salmon than from Vancouver, but state that the $2 rate was originally established to foster the berry industry and contend that it was unreasonably low and does not afford a basis for reparation. The only testimony in support of this contention was a general statement that defendants would have received higher charges on a carload of the cheapest freight from the coast to Sioux Falls than on the traffic in question at the $2 rate, and that the charges on the latter would have been less than for the transportation of eggs from the coast to St. Paul, Minn.

The fourth section departure resulting from the application of a higher rate from White Salmon, an intermediate point, than from Vancouver, was protected by an appropriate fourth section application, but as this departure had been removed in 1914 no application was set for hearing with this case.

We find that the rate charged was unreasonable to the extent that it exceeded $2 per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $253.60, with interest. No order for the future is necessary. An order awarding reparation will be entered.

No. 10208.

GAMBLE ROBINSON COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted November 27, 1918. Decided December 30, 1919.

Rate of $1.38 per 100 pounds charged on a mixed carload of oranges and lemons from Lindsay, Calif., to Sidney, Mont., found to have been unreasonable to the extent that it exceeded $1.15. Reparation awarded.

L. A Knudsen for complainant.

B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale fruit and produce business at Minneapolis, Minn. By complaint filed June 15, 1918, it alleges that the charges collected by defendants on a mixed carload of oranges and lemons, shipped November 18, 1916, from Lindsay, Calif., to Miles City, Mont., and diverted in transit to Sidney, Mont., were unreasonable. Reparation is asked. Rates are in amounts per 100 pounds.

Sidney is the northern terminus of a branch line of the Northern Pacific Railway extending about 55 miles from the main line at Glendive, Mont. The shipment weighed 28,392 pounds and moved as routed by the shipper over the line of the Southern Pacific Company to Ogden, Utah, Oregon Short Line Railroad to Silver Bow, Mont., and Northern Pacific Railway beyond. Charges were collected in the sum of $393.70 based on the legally applicable combination rate of $1.38, composed of a commodity rate of $1.15 to Glendive and a third-class rate of 23 cents beyond, plus a diversion charge of $2 which is not assailed.

Defendants contemporaneously maintained a commodity rate of $1.15 on oranges and lemons in mixed carloads from Lindsay to practically all points east of the Rocky Mountains and north of the Ohio River. This rate applied to many branch-line points such as Mott, N. Dak., 127 miles from the junction with the main line of

the Northern Pacific at Mandan, N. Dak. Defendants' witness stated at the hearing that the $1.15 rate, increased by 25 per cent under General Order No. 28 of the Director General of Railroads, had been published to apply to Sidney, but an inspection of the tariffs on file with us fails to verify this statement.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded $1.15. Defendants admit that the rate to Sidney was not properly aligned with the rates to other points in that territory, but deny that the charges collected were unreasonable. They compare the rate charged with higher rates on sugar from San Francisco, Calif., and on butter, eggs, poultry, cheese, fresh meat, and packing-house products from Chicago, Ill., and St. Paul, Minn., to equidistant points in Montana.

We find that the rate legally applicable was unreasonable to the extent that it exceeded $1.15 per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $65.19, with interest.

An order awarding reparation will be entered.

No. 10584.

LOWRY LUMBER COMPANY

v.

DIRECTOR GENERAL, GULF & SHIP ISLAND RAILROAD COMPANY, ET AL.

Submitted July 13, 1919. Decided December 19, 1919.

Charges on a carload of lumber from Mendenhall, Miss., to Cairo, Ill., reconsigned to Partridge, Kans., found to have been unreasonable to the extent that they exceeded the charges at the joint through rate plus $2 for reconsignment.

John N. Swenson for complainant.

A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, successor in interest to Beekman Lumber Company, is a corporation engaged in the lumber business at Kansas City, Mo. By complaint filed March 24, 1919, it alleges that the charges collected on a carload of lumber shipped November 14, 1917, from Mendenhall, Miss., to Cairo, Ill., reconsigned to Partridge, Kans., were unreasonable to the extent that they exceeded the charges which would have accrued at the joint through rate contemporaneously applicable from Mendenhall to Partridge. Reparation and the establishment of just and reasonable charges for the future are asked. Rates are stated in cents per 100 pounds.

The shipment consisted of 40,000 pounds of yellow-pine lumber and moved over the Gulf & Ship Island Railroad to Hattiesburg, Miss., Illinois Central Railroad through Cairo to St. Louis, Mo., and thence Chicago, Rock Island & Pacific Railway to destination. Charges were collected in the sum of $160, exclusive of the war tax, at a combination rate of 40 cents, based upon rates of 15 cents to Cairo and 25 cents beyond. Contemporaneously there was in effect over the route of movement a rate of 29 cents from Mendenhall to Partridge, under which reconsignment at Cairo was not permitted. This rate also applied from and to the points named through Memphis, Tenn., and the shipment could have been reconsigned at

Memphis thereunder. On June 25, 1918, in pursuance of General Order No. 28 of the Director General, this rate was increased to 34 cents, the present rate. The short-line distance from Mendenhall to Partridge is through Memphis, 869 miles; the distance through Cairo, 1,089 miles. The shipment apparently did not arrive at Cairo until a considerable time after the reconsignment instructions were given to defendants; and complainant urges that the increased charges were, therefore, excessive for the additional service performed in reconsigning the car.

Defendants state that the shipment moved by an unnatural route, although they admit that the joint through rate asked by complainant also applied over that route. They also contend that the 40-cent combination was reasonable and cite similar rates for like distances on lumber in carloads from certain points in Missouri and Arkansas to points in Nebraska.

In *Kern & Sons* v. *C., M. & St. P. Ry Co.*, 40 I. C. C., 552, and the *Reconsignment Case*, 47 I. C. C., 590, we found that a maximum charge of $2 for the extra service incident to the diversion or reconsignment of a car was reasonable provided the contents of the car remained unchanged, no out-of-line haul was necessary, and request was received before the arrival of a car at original destination or within a reasonable time thereafter and before the car was set for delivery. The car in question moved and was handled in conformity with these conditions.

Following the cases cited and upon the facts of record, we find that the charges assailed were unreasonable to the extent that they exceeded those which would have accrued at the contemporaneous joint through rate from Mendenhall to Partridge, plus a charge of $2 for reconsignment in transit. We further find that the shipment was made by said Beekman Lumber Company as described; that said Beekman Lumber Company paid and bore the charges and was damaged thereby; and that complainant, successor in interest to said Beekman Lumber Company, is entitled to reparation in the sum of $42, with interest.

Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid, computed on the published rate, in excess of what the war tax would have been if computed on the rate which we subsequently find would have been reasonable.

An order awarding reparation will be entered, but as the basis herein found reasonable was established on May 27, 1918, in conformity with the *Reconsignment Case*, *supra*, and is still in effect, no order will be entered for the future.

No. 10598.

SUNLAND OIL COMPANY

v.

DIRECTOR GENERAL, TEXAS & PACIFIC RAILWAY COMPANY, ET AL.

Submitted July 8, 1919. Decided December 19, 1919.

Rate of 95 cents per 100 pounds on gasoline, in carloads, from Wilson, Okla., to El Paso, Tex., found to have been unreasonable to the extent that it exceeded 44.5 cents. Reparation awarded.

W. E. Ralph for complainant.

F. E. Andrews and *F. R. Dalzell* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the purchase and sale of petroleum products at Tulsa, Okla. By complaint filed March 19, 1919, as amended, it alleges that the rate charged by defendants on two carloads of gasoline shipped from Wilson, Okla., to El Paso, Tex., August 19 and 22, 1918, was unreasonable. Reparation only is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 106,841 pounds, moved over the Oklahoma, New Mexico & Pacific Railway to Ardmore, Okla., Gulf, Colorado & Santa Fe Railway to Fort Worth, Tex., and Texas & Pacific Railway to destination. The two carriers last named were and are under federal control, but not the first named. Charges were collected in the sum of $1,014.99, exclusive of a war tax, at the joint fifth-class rate of 95 cents. Reparation is asked on the basis of a rate of 44.5 cents. When the shipments moved a rate of 43.5 cents applied to El Paso from Ardmore, 20 miles east of Wilson. Complainant's witness testified that oil rates from Wilson were ordinarily based on Ardmore. Before the shipments moved the complainant requested defendant Oklahoma, New Mexico & Pacific to establish a rate of 43.5 cents from Wilson to El Paso, and that line, it is stated, agreed to its establishment, but apparently that basis was not agreeable to its connections, the other defendants in this case. On December 31, 1918, a rate of 44.5 cents was established from Wilson to El Paso, being a 1-cent arbitrary over

the rate from Ardmore to El Paso, and is still in effect. The distance from Wilson to El Paso is 739 miles. The rate charged earned 25.7 mills per ton-mile, and 68.7 cents per car-mile on the average weight of 53,420 pounds. The subsequently established rate of 44.5 cents earned 12 mills per ton-mile and 32.2 cents per car-mile on the basis of these shipments. The complainant is not a party to the transportation records, but the undisputed evidence is that the shipments were made for its account, and that it is the real party in interest and entitled to any reparation which may be awarded.

The defendants introduced no evidence.

We find that the rate assailed was unreasonable to the extent that it exceeded a rate of 44.5 cents per 100 pounds; that the shipments were made as described; that complainant paid and bore the charges thereon at the rate herein found unreasonable; and that it is entitled to reparation in the sum of $539.55, with interest. Following *Zelnicker Supply Co.* v. *S. Ry. Co.*, 53 I. C. C., 308, we hold that we are without power to order a refund of war taxes.

An appropriate order will be entered.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

I. & S. 1148. LUMBER, VIRGINIA TO NORTHERN POINTS. Rates on lumber from Virginia points to Ohio and Mississippi River crossings and to c. f. a. destinations. *Loyal, Taylor & White* and *G. A. Wingfield* for Virginian Railway Co. *R. Walton Moore, Frank W. Gwathmey, Charles D. Drayton*, and *W. S. Bronson* for other respondents. Schedules under suspension cancelled. Proceeding discontinued, December 18, 1919.

3121. TUCSON SHIPPERS' ASSOCIATION *v.* S. P. Co. Switching charges at Tucson, Ariz. *S. S. Kingan* for complainant. *F. C. Dillard, P. F. Dunn, C. W. Durbrow*, and *R. S. Stubbs* for defendant. Dismissed on request of complainant, November 10, 1919.

3441. SCATTERGOOD et al. *v.* P. R. R. Co. et al. Allowance for unloading and elevating carload shipments of grain, hay, straw, and flour, etc. *S. F. Scattergood* and *James W. M. Newlin* for complainants. *Geo. D. Dixon, Henry Wolf Biklé, George Stuart Patterson*, and *Walker F. Hagar* for defendants. Dismissed for lack of prosecution, December 9, 1919.

4944. LANG & OUVERSON et al. *v.* I. C. R. R. Co. et al. Rates on motor cycles from Chicago, Ill., Erie, Pa., and Springfield and Armory, Mass., to Hanlontown and Waterloo, Iowa. *G. M. Stephen* for complainant. *Wallace T. Hughes, A. P. Humburg, C. C. Wright*, and *A. H. Lossow* for defendants. Dismissed on request of complainant, November 10, 1919.

5433. CORPORATION COMMISSION OF THE STATE OF NORTH CAROLINA *v.* S. RY. Co. et al. Rates on various commodities from Boston, New York, Philadelphia, Baltimore, and other points to Charlotte and other points in North Carolina. *Franklin McNeill, W. T. Lee* and *E. L. Travis* for complainant. *S. S. Perry, R. C. Wright, Frederick L. Ballard, Henry Wolf Biklé, George Stuart Patterson*, and *R. Walton Moore* for defendants. Dismissed for lack of prosecution, December 9, 1919.

5901 and Sub. Nos. 1 and 2. GUNDERSON et al. *v.* G. & S. I. R. R. Co. Rules governing wharfage facilities at Gulfport, Miss. *E. J. Bowers* for complainants. *Charles D. Drayton* for defendant. Complaint satisfied. Dismissed, October 7, 1919.

6842. BUICK MOTOR CO. et al. *v.* P. & R. RY. Co. et al. Rates on bar steel from points in Pennsylvania and Ohio to points in Michigan. *John B. Daish* for complainant. *Archibald Fries, H. W. Forward, T. H. Burgess, W. H. Spicer, William W. Collin, Jr., John H. Koch, John T. Johnston*, and *Frederick B. Brown* for defendants. Dismissed on request of complainant, April 7, 1919.

6842. SUB. NO. 1. WESTON-MOTT CO. *v.* P. & R. RY. Co. et al. Rate on bar steel from Reading, Pa., to Flint, Mich. *John B. Daish* for complainant. *Archibald Fries, H. W. Forward, T. H. Burgess, W. H. Spicer, William W. Collin, jr., John J Koch, John T. Johnston*, and *Frederick B. Brown* for defendants. Dismissed on request of complainant, July 30, 1919.

7443. ROGERS-WHITE LIME CO. *v.* ST. L. & S. F. R. R. Co. et al. Rates on lime from Monte Ne, Ark., to various destinations. *Dick Rice* for complainant.

Thomas Bond, W. M. Powers, A. A. Hurd, B. F. E. Marsh and *R. C. Hobbs* for defendants. Good cause appearing therefor, complaint dismissed October 7, 1919.

7519. CUDAHY PACKING CO. *v.* A., T. & S. F. RY. CO. et al. Rates, minimum carload weights, and mixing and loading rules for the transportation of fresh meats and packing-house products from Sioux City, Iowa, South Omaha, Nebr., Kansas City and Wichita, Kans., to points east of the Indiana-Illinois state line. *William E. Lamb* and *Thomas Creigh* for complainant. *R. D. Rynder* for interveners. *Ernest S. Ballard, William W. Collin, jr., D. L. Meyers, Wallace T. Hughes, Fred C. Furry, C. J. Faulkner, jr., H. K. Crafts, W. W. Manker, R. H. Widdicombe, A. F. Cleveland, O. W. Dynes,* and *C. H. Lahey* for defendants. Dismissed on request of complainants, July 30, 1919.

7788. GRAUSTEIN *v.* B. & M. R. R. et al. Rate on milk from Vergennes, Vt., and intermediate stations, to Boston, Mass. *William A. Graustein* for complainant. *Charles S. Pierce* and *W. A. Cole* for defendant. Complaint satisfied. Dismissed, November 21, 1919.

8132. NEW YORK MERCANTILE EXCHANGE *v.* B. & O. S. W. R. R. Co. et al. Rates on butter, cheese, eggs and poultry, any quantity, between points in official classification territory or between points in official classification territory and other points, and the charges for icing and refrigeration. *Julius D. Mahr* for complainant. *Edward Barton, F. B. Carpenter, L. E. Hinkle, John J. Koch, O. E. Butterfield, T. H. Burgess, M. B. Pierce, D. L. Gray, C. S. Wight, William C. Coleman,* and *C. E. Dewey* for defendants. Decision in Docket No. 7969 disposed of issues herein involved, and case dismissed, November 10, 1919.

8271. HUTCHINSON TRAFFIC BUREAU *v.* A., T. & S. F. RY. CO. et al. Rates on beans, sugar, canned goods, and coffee, from Hutchinson, Kans., to points in Colorado. *E. H. Hogueland* for complainant. *R. G. Merrick, Fred G. Wright* and *C. C. P. Rausch* for defendants. Dismissed on request of complainant, November 10, 1919.

8489. KANSAS-OKLAHOMA TRACTION CO. *v.* E., J. & E. RY. CO. et al Rates on rails and fastenings from South Chicago, Ill., to South Coffeyville, Okla. *E. H. Hogueland* and *W. M. Casey* for complainant. *Fred G. Wright* and *F. B. Clark* for defendants. Complaint satisfied. Dismissed, December 9, 1919.

9166. GAMBLE ROBINSON FRUIT CO. *v.* N. P. RY. CO. Rates on apples from points in Washington to points in North Dakota. *L. A. Knudsen* for complainant. *L. R. Capron* for defendant. Transferred to Special Docket for adjustment, May 20, 1919.

9295. ATLAS LUMBER CO. *v.* P. Co. Storage charges on shingles at Convoy, Ohio. *L. S. McIntyre* and *Chas. E. Patton* for complainant. *A. S. J. Holt* for defendant. Transferred to Special Docket for adjustment, July 7, 1919.

9791. BEEKMAN LUMBER CO. *v.* S., W. & S. R. R. Co. et al. Rate on lumber from West Eminence, Mo., to Kansas City, Mo., reconsigned to Waterloo, Iowa. No appearance for complainant. *F. C. Broadway* and *J. A. Middleton* for defendants. Dismissed on request of complainant, September 11, 1919.

9844. COAD *v.* A., T. & S. F. RY. CO. et al. Rates on gasoline, kerosene and refined oil from Cushing, Okla., and Chanute, Kans., to Iowa and Minnesota points. *C. W. Pitts* for complainant. *A. J. Grummett* and *M. J. Golden* for defendants. Transferred to Special Docket for adjustment, May 24, 1919.

9858. GOOD-HOPKINS LUMBER CO. *v.* G. N. RY. CO. et al. Rate on lumber from Wahkiakus, Wash., to Vandalia and Dodson, Mont. *R. J. Knott* for complainant. *Thomas Balmer* and *C. J. Bolander* for defendants. Dismissed for lack of prosecution, October 7, 1919.

9905. RATES TO MISSOURI RIVER CITIES AND RELATED TERRITORIES. Investigation by the Commission of proposed increased class rates from New Orleans and points taking same rates to Missouri River cities, Kansas, Missouri, and Nebraska points, Oklahoma common points, and other destinations. Upon withdrawal of Fifteenth Section Applications, proceeding discontinued, October 7, 1919.

9935. MOORE STAVE CO. *v.* M. & O. R. R. Co. et al. Rates on staves and heading from Mobile, Ala., to points in trunk line territory, Virginia and Quebec. *Claude W. Owen* for complainant. *R. Walton Moore* and *D. Lynch Younger* for defendants. Complaint satisfied. Dismissed, October 7, 1919.

9976. SWIFT & CO. *v.* M. P. R. R. Co. Demurrage charges on cars placed for icing. *R. D. Rynder* for complainant. *H. G. Herbel* for defendant. Dismissed on request of complainant, December 9, 1919.

9990. ST. ELLEN COAL CO. et al. *v.* ST. L. & B. E. RY. CO. et al. Through routes and joint rates on coal from Illinois mines to destinations on the line of the Missouri, Kansas & Texas Railway Co. *R. W. Ropiequet* for complainants. *M. W. Schaefer, E. C. Kramer, C. S. Burg,* and *W. W. Miller* for defendants. Dismissed on request of complainant, September 11, 1919.

10030. MILTON BRICK CO. et al. *v.* P. R. R. Co. et al. Rates on brick from Milton, Watsontown, and Paxtonville, Pa., to points in trunk line and New England territories. *John A. Henderson* for complainants. *Henry Wolf Bicklé* for defendants. Dismissed for lack of prosecution, October 7, 1919.

10031. AMERICAN COATING MILLS *v.* A. A. R. R. Co. et al. Rates on "boards coated or decorated," in official classification territory. *Frank A. Larish* for complainant. *G. W. Sterling, F. C. Baird, W. J. Mullin, E. W. Beatty, John C. Bills, Wm. Jay Turner, W. J. Ferguson, J. L. Seager, A. C. Tumy, Dudley & Michener, W. C. Snyder, A. P. Gilbert, S. S. Perry, H. A. Fidler, S. R. Thomas, W. L. Kinter, J. F. Auch, M. S. Connelly, James Stillwell, J. C. Clift, D. L. Gray, T. H. Burgess, M. B. Pierce, H. D. Howe, R. Walton Moore, W. N. King, Morrison R. Waite, C. E. Dewey, D. P. Connell,* and *Robert L. Burnap* for defendants. Dismissed on request of complainant, November 10, 1919.

10110. NEW ORLEANS JOINT TRAFFIC BUREAU et al. *v.* A. & S. RY. CO. et al. Rates on live stock to New Orleans and the Parish of St. Bernard, La., from points in southern states. *J. W. Hamilton* for complainants. *George G. Herring* for defendants. Dismissed on request of complainant, November 10, 1919.

10142. SIOUX CITY COMMERCIAL CLUB *v.* A. & W. RY. CO. et al. Rates on class traffic between Sioux City, Iowa, and points in Oklahoma, Missouri, Arkansas, Texas, and Louisiana. *J. P. Haynes* for complainant. No appearance for defendant. Dismissed on request of complainant, December 9, 1919.

10279. UNION LIME CO. *v.* C. & N. W. RY. CO. et al. Rates on crushed stone from Brillion, Wis., to Cloquet, Minn. *M. J. Ash* for complainant. *R. Walton Moore* for defendants. Complaint satisfied. Dismissed. November 19, 1919.

16358. ST. ELLEN COAL CO. et al. *v.* DIRECTOR GENERAL et al. Rates on coal from mines in Illinois to various destinations. *R. W. Ropiequet* for complainants. *C. S. Burg, B. J. Rowe* and *M. W. Schaefer* for defendants. Transferred to Special Docket for adjustment, June 30, 1919.

10372. FIFER LUMBER CO. *v.* DIRECTOR GENERAL et al. Rates on lumber from Anacortes, Wash., destined to Havre, Mont., reconsigned to Cambridge, Nebr., and reconsigned a second time to Omaha, Nebr. No appearance for complainant. *F. V. Brown* and *A. J. Laughon* for defendants. Dismissed for lack of prosecution, October 7, 1919.

10389. TRAFFIC BUREAU OF NASHVILLE *v.* L. & N. R. R. Co. et al. Rates on coal from mines in western Kentucky to Nashville, Tenn. *T. M. Henderson*

for complainant. *R. Walton Moore* for defendants. Dismissed on request of complainant, November 10, 1919.

10442. CONTACT PROCESS Co. *v.* P. R. R. Co. et al. Rate on esparanza iron pyrites from Philadelphia, Pa., to Buffalo, N. Y. *Dudley, Stowe & Sawyer* for complainant. *Henry Wolf Bicklé* for defendants. Transferred to Special Docket for adjustment, November 17, 1919.

10465. DU PONT DE NEMOURS & Co. *v.* DIRECTOR GENERAL et al. Rate on nitrocellulose from Hopewell, Va., to Haskell, N. J. *H. S. Farrow* for complainant. *Theodore W. Reath* and *William L. Kinter* for defendants. Complaint satisfied. Dismissed November 10, 1919.

10482. DU PONT DE NEMOURS & Co. *v.* DIRECTOR GENERAL et al. Rates on lime from Cavetown, Md., to Hopewell, Va. *H. S. Farrow* for complainant. *Theodore W. Reath* and *Charles J. Rixey, jr.*, for defendants. Transferred to Special Docket for adjustment, July 30, 1919.

10488. ATLANTIC REFINING Co. *v.* DIRECTOR GENERAL et al. Rates on petroleum products and lubricating and road oils from Philadelphia, Pa., to points in Massachusetts, Rhode Island, and Maine. *E. H. Porter* for complainant. No appearance for defendant. Transferred to Special Docket for adjustment, May 19, 1919.

10530. INLAND EMPIRE PAPER Co. *v.* DIRECTOR GENERAL et al. Rate on crude sulphur from Bryanmound, Tex., to Millwood, Wash. *James P. Dillard* for complainant. *W. A. Robbins, F. D. Allen,* and *H. E. Lounsbury* for defendants. Dismissed on request of complainant, July 30, 1919.

10534. CHICAGO, LAKE SHORE & SOUTH BEND RY. Co. *v.* DIRECTOR GENERAL et al. Interchange of traffic between connecting carriers. *F. J. Lewis Meyer* for complainant. *John B. Cockrum* and *Charles P. Stewart* for defendants. Dismissed on request of complainant, July 30, 1919.

10536. FISHER & CAROZZA BROS. Co. *v.* DIRECTOR GENERAL et al. Rates on gravel from North East, Md., to Wawaset Park and Wilmington, Del. No appearance for complainant. *W. A. Parker* for defendants. Transferred to Special Docket for adjustment, July 30, 1919.

10537. TERRE HAUTE CHAMBER OF COMMERCE *v.* DIRECTOR GENERAL et al. Short-haul rates on coal to Terre Haute, Ind. *C. A. Royse* for complainant. *R. V. Fletcher* for defendants. Dismissed on motion of complainant, July 30, 1919.

10550. CROWN WILLAMETTE PAPER Co. *v.* DIRECTOR GENERAL et al. Rates on cordwood and damaged lumber from Truckee, Calif., to San Francisco, Calif. *John J. Seid* for complainant. *Frank B. Austin* for defendants. Dismissed on request of complainant, October 7, 1919.

10553. CHICAGO, LAKE SHORE & SOUTH BEND RY. Co. *v.* DIRECTOR GENERAL et al. Refusal of defendant to establish through routes and joint rates and to make switching allowances. *F. J. Lewis Meyer* for complainant. *A. P. Humburg, Chas. J. Rixey, jr., H. C. Martin,* and *R. V. Fletcher* for defendants. Dismissed on request of complainant, July 30, 1919.

10556. GRAHAM PAPER Co. *v.* DIRECTOR GENERAL et al. Rate on wrapping paper from Oregon City, Oreg., to Birmingham, Ala. No appearance for complainant. *A. P. Humburg, E. K. Bryan,* and *C. B. Sexton* for defendants. Dismissed on request of complainant, October 7, 1919.

10565. AMERICAN FIRE BRICK Co. *v.* DIRECTOR GENERAL et al. Rates on coal from Corbin, B. C., and Blairmore, Alberta, to Mica, Wash. *J. B. Campbell* and *R. S. Brown* for complainant. *W. A. Robbins, F. D. Allen,* and *H. E. Lounsbury* for defendants. Dismissed on request of complainant, July 30, 1919.

10569. SQUIRE & Co. et al. *v.* C. & N. W. RY. Co. et al. Rates on live hogs from points in Iowa to Clinton, Iowa, and forwarded to points in the East. *A. J. Canfield* for complainant. *W. C. Knoble* and *R. V. Fletcher* for defendants. Dismissed on request of complainant, September 11, 1919.

10615. OUACHITA VALLEY RY. Co. *v.* DIRECTOR GENERAL et al. Division of rates on lumber from Millville, Ark., to Artesian, Ark. *G. F. Thomas* for complainant. *George B. Pugh* for defendants. Dismissed on request of complainant, December 9, 1919.

10621. BUNKER HILL & SULLIVAN MINES Co. *v.* DIRECTOR GENERAL et al. Rate on coke from Fernie, B. C., to Sweeney, Idaho. *J. B. Campbell* and *R. S. Brown* for complainant. *W. A. Robbins* and *F. D. Allen* for defendants. Dismissed on request of complainant, July 30, 1919.

10644. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rates on plaster from Grand Rapids, Mich., to Lynch, Ky. *M. N. Sale, S. H. West* and *S. A. Walker* for complainant. *H. A. Sleeper* and *E. M. Davis* for defendants. Dismissed on motion of complainant, November 10, 1919.

10645. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rates on wall plaster from Grand Rapids, Mich., to Bracholm, W. Va. *M. N. Sale, S. H. West,* and *S. A. Walker* for complainant. *H. A. Sleeper* and *E M. Davis* for defendants. Complaint satisfied. Dismissed November 10, 1919.

10646. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rates on wall plaster from East St. Louis, Ill., to Flemingsburg, Ky. *M. N. Sale, S. H. West,* and *S. A. Walker* for complainant. *William Burger* for defendants. Dismissed on request of complainant, November 10, 1919.

10652. LYON & Co. *v.* DIRECTOR GENERAL et al. Rate on apples from Hood River, Oreg., to El Paso, Tex. *A. U. Tadlock* for complainant. No appearance for defendant. Dismissed on request of complainant, July 30, 1919.

10654. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rates on plaster from Acme, N. Mex., to Florence, Ala. *S. H. West* for complainant. *A. P. Stewart* for defendants. Dismissed on motion of complainant, November 10, 1919.

10655. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rates on cement plaster from Acme, Tex., to Farmington, Mo. *M. N. Sale, S. H. West,* and *S. A. Walker* for complainant. *A. P. Stewart* for defendants. Dismissed on motion of complainant, November 10, 1919.

10661 and Sub. Nos. 1, 2, 3, 4, and 5. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rates on plaster and wall plaster from Acme, Tex., to points in Indiana and Illinois. *M. N. Sale, S. H. West,* and *S. A. Walker* for complainant. *A. P. Stewart, William Burger, R. D. Hunter,* and *B. H. Dolly* for defendants. Dismissed on motion of complainant, November 10, 1919.

10666. ACME CEMENT PLASTER Co. *v.* DIRECTOR GENERAL et al. Rate on wall plaster from Acme, Tex., to West Palm Beach, Fla. *M. N. Sale, S. H. West,* and *S. A. Walker,* for complainant. *William Burger* for defendants. Dismissed on motion of complainant, November 10, 1919.

10673. LEWIS MANUFACTURING Co. et al. *v.* DIRECTOR GENERAL et al. Rates on roofing and paving materials from Chicago and Moline, Ill., Carthage, Ohio, St. Louis, Mo., and Minneapolis and Duluth, Minn., to numerous points. *Arthur B. Hayes* for complainant. *W. C. Knoble* and *R. V. Fletcher* for defendants. Dismissed on request of complainant, September 11, 1919.

10691. PHILADELPHIA SHIPPING Co. *v.* DIRECTOR GENERAL et al. Rates on rosin, turpentine, and pine oil, in barrels, from Philadelphia, Pa., to San Francisco, Calif., via water route. *F. W. Davis* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant, September 11, 1919.

10702. LOWRY LUMBER CO. *v.* DIRECTOR GENERAL et al. Demurrage charges on lumber at Council Bluffs, Iowa, originating at Westport, Oreg. *G. H. Lowry* and *John N. Swenson* for complainant. *A. P. Humburg, C. W. Crawford* and *M. W. Rotchford* for defendants. Dismissed on request of complainant, October 7, 1919.

10711. NAYLOR & CO. (INC.) *v.* B. & O. R. R. Co. et al. Rates on steel billets from Wheeling, W. Va., to New Orleans, La., for export. *C. N. Bissell* for complainant. *Alexander N. Bull* and *William Ainsworth Parker* for defendants. Dismissed for lack of prosecution, October 7, 1919.

10724. MARIETTA MANUFACTURING CO. *v.* DIRECTOR GENERAL et al. Rates on vitro-marble from Indianapolis, Ind., to Chicago, Ill., St. Louis Mo., Cincinnati, Ohio, New York, N. Y., Baltimore, Md., and Philadelphia, Pa. *W. O. Dunlary* for complainant. *W. A. Parker* for defendants. Dismissed on request of complainant, November 10, 1919.

10738. GLADE LUMBER CO. *v.* B. & O. R. R. Co. et al. Charges for transportation of lumber from Erwin, W. Va., to M. & K. Junction, W. Va., and return; and refusal to accept shipment of lumber at M. & K. Junction, W. Va., destined to Falconer, N. Y., because of embargo. No appearances for complainant. No appearances for defendant. Complaint satisfied. Dismissed, November 10, 1919.

10748. GREATER DES MOINES COMMITTEE (INC.) *v.* DIRECTOR GENERAL et al. Rates on class-rated articles between Des Moines, Iowa, and points east of the Indiana-Illinois state line. *E. G. Wylie* for complainant. *Samuel D. Snow* and *Chas. B. Hopper* for defendants. Dismissed on request of complainant, September 11, 1919.

10750. AETNA EXPOSIVES CO. *v.* DIRECTOR GENERAL. Rate on sulphuric acid from Denver, Colo., to Ispheming, Mich. *Winthrop & Stimson* for complainants. *R. V. Fletcher* for defendants. Transferred to Special Docket for adjustment. November 14, 1919.

10758. OHIO & MICHIGAN SAND & GRAVEL CO. et al. *v.* DIRECTOR GENERAL et al. Rates on sand and gravel from Fleming Creek, Oxford, and Chilson, Mich., to Detroit, Mich. *W. Frank Bradley* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant, November 10, 1919.

10796. MATHES CO. *v.* DIRECTOR GENERAL. Rate on scrap cartridge shells and caliber clips from Camp Funston, Kans., to St. Louis, Mo. *George B. Webster* for complainant. *R. V. Fletcher* for defendant. Dismissed on request of complainant, November 10, 1919.

10802. LOWRY LUMBER CO. *v.* DIRECTOR GENERAL et al. Rate on lumber from Trinity, Tex., to Parsons, Kans., reconsigned to Montreal, Quebec. *G. H. Lowry* for complainant. No appearance for defendants. Dismissed on request of complainant, December 9, 1919.

10812. AETNA EXPLOSIVES CO. *v.* DIRECTOR GENERAL et al. Rate on iron pyrites from Mount Union, Pa., to Brills, N. J. *Winthrop & Stimson* and *Edward L. Miller* for complainant. *A. Hamilton* for defendants. Transferred to Special Docket for adjustment, December 8, 1919.

10823. TEXAS CO. *v.* DIRECTOR GENERAL et al. Rates on petroleum products between points in Oklahoma and Texas. *James L. Nesbitt* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant, December 9, 1919.

10828. JEMISON & CO. *v.* A. C. L. R. R. Co. et al. Refusal to accept shipment as routed from Banks, Ark., to Savannah, Ga., via Troy, Ala. *Walker & Burbank* for complainant. *R. V. Fletcher* for Director General. Complaint satisfied. Dismissed, November 10, 1919.

10833. BELZONI HARDWOOD LUMBER CO. *v.* DIRECTOR GENERAL et al. Weight applied on sap gum lumber from Belzoni, Miss., to Evansville, Ind. *Earl Kauffman* for complainant. *A. P. Humburg* for defendants. Complaint satisfied. Dismissed, December 9, 1919.

10836. ILLINOIS COAL TRAFFIC BUREAU et al. *v.* DIRECTOR GENERAL et al. Rates on coal from mines in Saline County, Ill., and the Clinton district, Indiana, to the Chicago switching district. *F. H. Harwood* and *Clarence B. Cardy* for complainant. *C. G. Austin, Jr.*, and *R. V. Fletcher* for defendants. Dismissed on request of complainant, December 9, 1919.

10853. OLIVER IRON MINING CO. *v.* DIRECTOR GENERAL et al. Rate on crude iron ore from Arcturus, Minn., to Bovey, Minn. *Charles MacVeagh, C. A. Severance,* and *Charles S. Belsterling* for complainant. *R. V. Fletcher* and *William A. McGonagle* for defendants. Dismissed on request of complainant, December 9, 1919.

10854. OLIVER IRON MINING CO. *v.* DIRECTOR GENERAL et al. Increased rates on iron ore from mines in Michigan, Wisconsin, and Minnesota; and increased rates on coal, Lake Superior and Lake Michigan ports to complainant's mines. *Charles MacVeagh, C. A. Severance,* and *Charles S. Belsterling* for complainant. *R. V. Fletcher* and *William A. McGonagle* for defendants. Dismissed on request of complainant, December 9, 1919.

10884. LADD *v.* A., T. & S. F. RY. CO. et al. Minimum weight on household goods from Mesilla Park, N. Mex., to Chicago, Ill., destined to Chevy Chase, Md. No appearance for complainant. *F. E. Andrews* for defendants. Dismissed for lack of prosecution, December 1, 1919.

10898. LOWRY LUMBER CO. *v.* DIRECTOR GENERAL et al. Rate on lumber from Emad, La., to Kansas City, Mo., there reconsigned to Des Moines, Iowa. *G. H. Lowry* for complainant. *R. V. Fletcher* and *W. H. McHenry* for defendants. Dismissed on request of complainant, November 10, 1919.

10905. DANZER & CO. *v.* S. A. L. RY. CO. et al. Alleged misrouting of lumber from Hamlet, N. C., to Wilkes-Barre, Pa. *J. F. Highlands* for complainant. *R. V. Fletcher* for defendants. Complainant satisfied. Dismissed, December 9, 1919.

10915. NEW ENGLAND PAPER & PULP TRAFFIC ASSOCIATION et al. *v.* H. T. & W. R. R. Co. et al. Rates on coal, lime, and salt cake inbound to, and wood pulp and lumber outbound from, Mountain Mills, Vt. *C. H. Tiffany* for complainants. *John P. Kellas, H. C. Martin, E. P. Flintoft* and *R. V. Fletcher* for defendants. Dismissed on request of complainant, November 10, 1919.

10932. WEISS MILLING CO. *v.* DIRECTOR GENERAL et al. Rates an alfalfa meal from Kansas mills to points in Arkansas, Illinois, Iowa, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, Alabama, and Tennessee. *F. L. Partridge, H. L. Low* and *W. P. Huston* for complainant. *J. R. Sewell* and *R. V. Fletcher* for defendants. Dismissed on request of complainant, December 9, 1919.

10973. SWIFT & CO. *v.* C. & A. R. R. Co. et al. Additional charges resulting from embargoes on packing-house products and fresh meats from Kansas City, Kans., to points in New York, Pennsylvania, Massachusetts, Virginia, and Michigan. *R. D. Rynder* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant, December 9, 1919.

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4800. SLOSS SHEFFIELD STEEL & IRON CO. *v.* L. & N. R. R. Co. July 30, 1919. Reparation for $229.74, on shipments of pig iron from Ensley, Woodward, and Thomas, Ala., to Quincy, Ill., on account of unreasonable rates.

8667. HASKELL MFG. CO. *v.* N. Y., N. H. & H. R. R. Co. July 30, 1919. Reparation for $606.72, on shipments of iron articles from Pawtucket, Darlington, and Valley Falls, R. I., to destinations in Connecticut and Massachusetts, on account of unreasonable rates.

9214. PURITY ICE CREAM CO. *v.* A., T. & S. F. RY. CO. July 30, 1919. Reparation for $680.79, on shipments of rock salt in bulk from Lyons and Kanopolis, Kans., to Tulsa, Okla., on account of unreasonable rates.

9474. MORRIS HERMANN & CO. *v.* N. Y., N. H. & H. R. R. Co. July 11, 1919. Reparation for $140.64, on shipments of spent iron mass from Cambridge, Mass., to Elizabethport, N. J., on account of unreasonable rates.

9740. NEOLA ELEVATOR CO. *v.* M. P. RY. CO. July 30, 1919. Reparation for $78.31, on shipments of wheat originating at Kiowa and other points in Kansas destined to Galveston, Tex., for export, on account of illegal charges exacted far out-of-line movement between Conway Springs and Wichita, Kans.

9759 and 9759 (Sub No. 1). DU PONT DE NEMOURS POWDER CO. *v.* P. & R. RY. CO. July 30, 1919. Reparation for $703.33, on shipments of nitrate of potash from Montchanin, Del., to Dupont, Wash., on account of unreasonable charges.

9985. KING & CO. *v.* N., C. & ST. L. RY. July 30, 1919. Reparation for $1,151.28, on shipments of citrus fruits from various points in Florida to Murfreesboro, Tullahoma, and McMinnville, Tenn., on account of unreasonable rates.

10095. NATIONAL STEEL RAIL CO. *v.* ST. L.-S. F. RY. CO. July 30, 1919. Reparation for $1,532.15, on shipments of old rails and fastenings from New Madrid, Mo., to Madison, Ill., on account of unreasonable rates.

10101. HITE & RAFETTO *v.* C. R. R. Co., OF N. J. July 30, 1919. Reparation for $333.95, on shipments of bituminous coal at defendant's pier at Elizabethport, N. J., on account of illegal demurrage charges.

10199. BROCK CANDY CO. *v.* A. G. S. R. R. Co. August 1, 1919. Reparation for $1,059.14, on shipments of clarified sugar in Cuban bags, from New Orleans, La., to Chattanooga, Tenn., on account of unreasonable charges.

7444 (Sub. No. 1). NICKEY BROS. & BASS *v.* C., R. I. & P. RY. CO. September 11, 1919. Reparation for $6,223.10, on shipments of hardwood logs from Tinsman, Ark., to Memphis, Tenn., on account of unreasonable rates.

7455. FLORIDA CYPRESS CO. *v.* L. & N. R. R. Co. September 11, 1919. Reparation for $506.40, on shipments of cypress lumber from Pensacola, Fla., to northeastern destinations, on account of unreasonable rates.

7768. COLUMBIA MALTING CO. *v.* N. Y. C. R. R. Co. September 11, 1919. Reparation for $173.49, on shipments of barley from points in South Dakota, Minnesota, Wisconsin, and Iowa to destinations in Pennsylvania, malted in transit at Chicago, Ill., on account of unlawful rates.

8152. MESKER & Co. *v.* L. & N. R. R. Co. September 11, 1919. Reparation for $116.93, on shipments of iron columns, steel beams, galvanized iron skylight frames, iron sash, roofing, and stair work from Evansville, Ind., to Crowley, La., on account of unreasonable rates.

8349. INDIANAPOLIS CHAMBER OF COMMERCE *v.* ST. L. & S. F. R. R. Co. September 11, 1919. Reparation for $164.87, on shipments of snath sticks in the rough from Luxora, Ark., to Indianapolis, Ind., on account of unreasonable rates.

9261. CASEY-HEDGES Co. *v.* A. G. S. R. R. Co. September 11, 1919. Reparation for $550.42, on shipments of cast-iron pipe and fittings shipped from Chattanooga, Tenn., to Manila, P. I., on account of overcharge.

9415. WEED LUMBER Co. *v.* S. P. Co. September 11, 1919. Reparation for $161.84, on shipments of pine doors and glazed sash from Weed, Calif., to Gallup, N. Mex., and Flagstaff, Ariz., on account of unreasonable rates.

9732. DU PONT DE NEMOURS & Co. *v.* P. & R. RY. Co. September 11, 1919. Reparation for $1,293.21, on shipments of nitrate of soda from Port Richmond, Pa., to Gibbstown, N. J., on account of unreasonable rates.

9781. SWIFT & Co., *v* A., T. & S. F. RY Co. September 11, 1919. Reparation for $327.45, on shipments of butter, eggs, and dressed poultry from Sedalia, Mo., to destinations east of the Indiana-Illinois state line, on account of unreasonable rates.

9970. PHILIP CAREY Co. *v.* A. G. S. R. R. Co. September 11, 1919. Reparation for $9,978.84, on shipments of expansion paving joints from Lockland, Ohio, to Pacific coast destinations, on account of unreasonable rates.

10039. SUN Co. *v.* T. & O. C. RY. Co. September 11, 1919. Reparation for $3,366.64, on shipments of crude oil from Miami, W. Va, to Toledo, Ohio, on account of unreasonable rates.

7536. HEINZ Co. *v.* P. M. R. R. Co. October 7, 1919. Reparation for $1,222.19, on shipments of kraut brine in mixed carloads with kraut or with kraut and pickles from Saginaw, Mich., to certain points in California, Washington, Colorado, Texas, and Oklahoma, on account of unreasonable rates.

8777. BRITTAIN BROS. *v.* ST. L. & S. F. R. R. Co. October 7, 1919. Reparation for $273.25, on shipments of live stock from Carrier, Covington, Goltry, Ames, Dacoma, and Cold Springs, Okla., to Wichita, Kans., on account of unreasonable rates.

8794. SWIFT & Co. *v.* B. & O. R. R. Co. October 7, 1919. Reparation for $865.68, on shipments of dressed poultry, butter, and eggs from interior Iowa points and Trenton, Mo., to Chicago and destinations east of the Indiana-Illinois state line, on account of unreasonable rates.

8818. ZELNICKER SUPPLY Co. *v.* MALLORY S. S. Co. October 7, 1919. Reparation for $1,491.38, on shipments of old rails and angle bars from Jersey City, N. J., to Louin, Miss., on account of illegal and unreasonable charges.

9162. DU PONT DE NEMOURS POWDER Co. *v.* I. & G. N. RY. Co. October 7, 1919. Reparation for $1,269.59, on shipments of nitrate of soda from Galveston, Tex., to Phoenixville, Ill., on account of unreasonable and illegal charges.

9349. BRYDEN HORSE SHOE Co. *v.* L. & N. E. R. R. Co. October 7, 1919. Reparation for $9,666.20, on various commodities to and from complainant's plant at Catasauqua, Pa., on account of unreasonable rates.

10113. GALION IRON WORKS & MFG. Co. *v.* C., C. & ST. L. RY. Co. October 7, 1919. Reparation for $1,027.70, on shipments of sheet steel culverts from Galion, Ohio, to Key West, Fla., on account of unreasonable rates.

10212. JAMIESON *v.* P. R. R. Co. October 7, 1919. Reparation for $26.71, on shipments of petroleum and its products from Warren, Pa., to Elmira, N. Y., on account of unreasonable rates.

10237. SEABOARD BY-PRODUCT COKE Co. *v.* E. R. R. Co. October 7, 1919. Reparation for $1,960.97, on shipments of by-product coke from Seaboard, N. J., to Troy, N. Y., on account of unreasonable rates.

10273. SAVAGE TIRE Co. *v.* A., T. & S. F. RY. Co. October 7, 1919. Reparation for $12,649.43, on shipments of automobile tires from San Diego, Calif., to eastern destinations, on account of unreasonable rates.

3768. KIRBY & Co. *v.* P. Co. November 10, 1919. Reparation for $32.76, on shipment of glassware from Bridgeville, Pa., to Greenville, S. C., on account of unreasonable rate.

9439. PENICK & FORD, LIQUIDATORS, *v.* M. L. & T. R. R. & S. S. Co. November 10, 1919. Reparation for $247.75, on shipments of imported blackstrap molasses from Harvey, La, to St. Louis, Mo., and East St. Louis, Ill., on account of unreasonable charges collected because of misrouting.

9980. INTERNATIONAL PAPER Co. *v.* L. E. & W. R. R. Co. November 10,.1919. Reparation for $1,563.63, on shipments of news-print paper from Niagara Falls, N. Y., to Little Rock and Fort Smith, Ark., on account of unreasonable rates.

10291. NATIONAL STEEL RAIL Co. *v.* ST. L. S. F. RY. Co. November 10, 1919. Reparation for $250.23, on shipment of railroad scrap iron from Stamps, Ark., to Springfield, Mo., on account of unreasonable charges.

10359. INLAND STEEL Co. *v.* I. H. B. R. R. Co. November 10, 1919. Reparation for $104.02, on shipments of billets and blooms from Indiana Harbor, Ind., to Chicago Heights, Ill., on account of unreasonable rates.

8614. MARTIN BROKERAGE Co. *v.* S. P. Co. December 9, 1919. Reparation for $25.69, on shipments of celery from Antioch, Calif., to Portland, Oreg., on account of unreasonable minimum weight.

9060. METZGER *v.* N. Y., C. & ST. L. R. R. Co. December 9, 1919. Reparation for $737.67, on shipments of crude naphthalene from Denver, Colo., to Cleveland and Lorain, Ohio, on account of unreasonable charges.

9551. MICHEL BREWING Co. *v.* C., B. & Q. R. R. Co. December 9, 1919. Reparation for $571, on shipments of beer from La Crosse, Wis., to Trosky, Minn., on account of unreasonable rates.

10141. SHANE BROS. & WILSON Co. *v.* P. R. R. Co. December 9, 1919. Reparation for $5,324.50, on shipments of flour from western states to Philadelphia, Pa., on account of overcharges.

10265. HENDERSON *v.* Y. & M. V. R. R. Co. December 9, 1919. Reparation for $338.02, on shipments of compressed cotton from Natchez, Miss., to Jackson, Tenn., on account of unreasonable rates.

10286. MICHAELS Co. *v.* C., B. & Q. R. R. Co. December 9, 1919. Reparation for $305.77, on shipments of scrap iron from Memphis, Tenn., to Federal, Ill., on account of unreasonable rates.

10294. AMERICAN AGRICULTURAL CHEMICAL Co. *v.* C. R. R. Co. of N. J. December 9, 1919. Reparation for $779.61, on shipments of acid phosphate from Carteret, N. J., to Philadelphia, Pa., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates $70,122.99.

ORDERS ISSUED INVOLVING REPARATION IN INFORMAL PLEADINGS FOR THE YEAR ENDED OCTOBER 31, 1919.

For the year ended October 31, 1919, the number of orders issued involving reparation in informal pleadings was 1,755; the number of claims denied or otherwise closed during that period was 648; and the amount of reparation awarded was $420,867.77.

TABLE OF COMMODITIES.

[The number in parentheses after citation indicates where commodity is considered.]

ACID, SULPHURIC:
Hopewell, Va., to Gibbstown and Carney's Point, N. J., 612.
Perth Amboy, N. J., to Philadelphia, Pa., 151.
ACIDS. Illinois, to and from points in, 290 (305).
ALCOHOL, DENATURED. New Orleans, La., to Wichita, Salina, Hutchinson, and Topeka, Kans., 515 (571).
ALUMINUM, SCRAP. Chicago, Ill., and St. Louis, Mo., from Denver and Loveland, Colo., and Cheyenne, Wyo., 199.
APPLES. Tontitown, Ark., to Fort Smith, Ark., 234.
APPLES, CULL. Washington to Portland, Oreg., 260.
BAGGING, BROWN COTTON, AND BURLAP. New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., and Enid, Oklahoma City, and Shawnee, Okla., 515 (571).
BAGS, BURLAP, GUNNY, AND JUTE. New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., and Enid, Oklahoma City, and Shawnee, Okla., 515 (571).
BANANAS. Miami, Okla., from New Orleans, La., and Mobile, Ala., 605.
BARLEY. Bourbon, Ind. Demurrage, 175.
BARS, ANGLE AND SLICE. East St. Louis, Ill., to Boonville, Ind., 135.
BARS, STEEL. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis, and Belleville, Ill., 688.
BEEF, DRESSED. Kansas City, Kans., to Oklahoma City, Okla., 691.
BEER. Milwaukee, Wis., to Dixon, Ill., 610.
BOARD, CHIP. Lockport, N. Y., to Camden, N. J., 218.
BOARD, ROCK. Rockford, Ill., to Kansas City, Mo., and Minneapolis, Minn., 262.
BOARD, WALL. Cornell, Wis., to various destinations. Rating, 257.
BOLTS. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
BOLTS, TRACK. East St. Louis, Ill., to Boonville, Ind., 135.
BOOTS. Illinois, to and from points in, 290 (305).
BOTTLES, GLASS. Illinois, to and from points in, 290 (306).
BOTTLES, GLASS SODA. Okmulgee, Okla., to Thibodaux, La., 8.
BRAN, RICE. Childress, Tex., from Iota and Welsh, La., 19.
BRASS ARTICLES. Official classification territory. Rating, 402 (404).
BRASS, SCRAP:
Chicago, Ill., from Denver, Trinidad, and Pueblo, Colo., 203.
Chicago, Ill., and St. Louis, Mo., from Denver and Loveland, Colo., and Cheyenne, Wyo., 199.
BRICK. Illinois, to and from points in, 290 (306).
BRONZE ARTICLES. Official classification territory. Rating, 402 (404).
CANNED GOODS:
Illinois, to and from points in, 290 (306).
New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., and Enid, Oklahoma City, and Shawnee, Okla., 515 (571).

CASES, EGG. Illinois, to and from points in, 290 (307).
CASINGS, METALLIC. Official classification territory. Rating, 402 (409).
CASSIA. Seattle and Tacoma, Wash., to New York, N. Y., Chicago, Ill., St. Louis, Mo., Toledo, Ohio, Minnesota Transfer, Minn., Montreal, Canada, and Baltimore, Md., 721.
CASTINGS. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
CATTLE. Hereford and Abernathy, Tex., to Pocatello, Idaho, and Butte and Monida, Mont., 597.
CEILING, METALLIC. Official classification territory. Rating, 402 (413).
CEMENT:
Cape Girardeau, Mo., to Illinois, 315.
Chapman, Pa., to Lugoff, S. C., 615.
CHERRIES. White Salmon, Wash., to Sioux Falls, S. Dak., 747.
CHIFFONIERS. Martinsville, Va., to Spokane, Wash., 17.
CHIP BOARD. *See* Board.
CHURNS, METAL BARREL. Bellewood, Ill., to Portland, Oreg., 345.
CIGARETTES. New York, N. Y., to California, Oregon, and Washington. Rating, 69.
CINDER, MILL:
Cleveland, Ohio, to Charlotte, N. Y., 449.
East Chicago, Ind., to Detroit, Mich., 669.
CLASS RATES:
Carrollton, Ky., to and from trunk line territory, 697.
Illinois, to and from points in, 290 (298, 302).
Madeline, Calif., from San Francisco, Oakland, Sacramento, and other California points, via Reno, Nev., 398.
Memphis, Tenn., and Natchez, Miss., to and from points in Arkansas, Oklahoma, and Missouri, 515.
Sheboygan, Wis., to St. Louis, Hannibal, and Louisiana, Mo., Keokuk, Iowa, and points in Illinois, 140.
CLASS AND COMMODITY RATES:
Atlantic seaboard territory to Colorado common points, via Galveston, Tex. Marine insurance, 374.
Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., from various points, 648.
New Orleans, La., to Oklahoma, Kansas, and Arkansas, 515 (566, 573).
Southeastern territory to Arkansas, 515 (557).
Western trunk line territory to Fort Smith, Ark., 515 (555).
CLAY, CRUDE. Buffalo Gap, S. Dak., to Des Moines, Iowa, 31.
COAL:
Benton and Zeigler, Ill., to South Dakota and Minnesota, reconsigned to various other points in those states, 744.
Cowan, Pa., to Alkali, Ohio, 711.
Holland, Mich. Demurrage, 617.
Illinois mines to Bonne Terre, Herculaneum, and other points in Missouri, 674.
Lorain, Ohio, to and from interstate points. Divisions and absorption of switching charges, 469.
Millstadt, Ill. Car distribution, 502.
Nelsonville, Ohio, to Aultman, Ohio, 485.
New Bedford, Mass. Transportation of, from wharves to plant, 320.
Utah mines to Boise, Nampa, and Caldwell, Idaho, 718.

COAL, ANTHRACITE. Pennsylvania mines to Toledo, Ohio, via Buffalo, N. Y., 220.
COAL, BITUMINOUS. Equality, Ill. Car furnishing, 491.
COAL, LIGNITE. Pikeview, Colo., to Kansas, Nebraska, Missouri, and Oklahoma, 249.
COAL, MILL, NUT AND PEA. Pittsburg district, Kans., to Dewey, Okla., 1.
COAL, RAILWAY FUEL. Illinois mines to Bonne Terre, Herculaneum, and other points in Missouri, 674.
COAL, SLACK:
Hume, Mo., to South Fort Smith, Ark., 133.
Pittsburg district, Kans., to Dewey, Okla., 1.
COFFEE, GREEN AND ROASTED. New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., 515 (571).
COKE. Lorain, Ohio, to and from interstate points. Divisions and absorption of switching charges, 469.
COMMODITY RATES. Illinois, to and from points in, 290 (304).
CONGOLEUM. Denver, Colo., from Philadelphia and Marcus Hook, Pa., 163.
COOPERAGE STOCK. California terminals from Memphis, Tenn., Dallas, Tex., Little Rock, Ark., Alexandria, La., St. Louis, Mo., and Chicago, Ill., 327.
COPPER ARTICLES. Official classification territory. Rating, 402 (404).
COPPER, SCRAP:
Chicago, Ill., from Denver, Trinidad, and Pueblo, Colo., 203.
Chicago, Ill., and St. Louis, Mo., from Denver and Loveland, Colo., and Cheyenne, Wyo., 199.
COPRA CAKE. Rolling Fork, Miss., to New Orleans, La., 154.
COPRA PRODUCTS. New Orleans and Baton Rouge, La., to various destinations, 154.
CORN, SHELLED. New Orleans, La., from Columbia, Pulaski, and Aspen Hill, Tenn., 703.
COTTON. Memphis, Tenn. Concentration and free delivery, 515 (546).
COTTON, COMPRESSED. Mobile, Ala., to Savannah, Ga., for export, 146.
COTTON PIECE GOODS:
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Springfield, Mo., from Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and other eastern cities, via Memphis, Tenn. Rail-water-and-rail routes, 400.
CREAM. El Paso, Tex., from New Mexico, Oklahoma, and Texas, 425.
CULLETS. Illinois, to and from points in, 290 (306).
DOORS, METALLIC. Official classification territory. Rating, 402 (409).
DRESSERS. Martinsville, Va., to Spokane, Wash., 17.
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ENGINES, GASOLINE. Flint, Mich., to Fort Worth, Tex., 601.
EXPLOSIVES, HIGH:
Emporium, Pa., to Ironton, Ohio, 177.
Fayville, Ill., to Flat River, Mo., 350.
South Windsor, Conn., to Emporium, Pa., 333.
EXTRACTS, FLAVORING. Southern classification territory. Rating, 11.
EYELETS, BRASS. New Bedford, Mass., to New York, N. Y., 274.
FASTENINGS, OLD RAIL:
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Denver, Colo., to Kansas City, Mo., reconsigned to Sioux City, Iowa, 137

FENCING, WOVEN-WIRE. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

FERTILIZER. Mobile, Ala., to Louisiana, 583.

FILLERS, EGG CASE. Illinois, to and from points in, 290 (307).

FINDINGS, BOOT AND SHOE. Illinois, to and from points in, 290 (305).

FITTINGS, PIPE. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

FLAVORING EXTRACTS. *See* Extracts.

FLOUR. Southern classification territory. Rules and regulations governing transportation of, in rope-paper sacks, 209.

FOREST PRODUCTS. Norfolk district, Va. Absorption of switching charges, 377.

FORGINGS. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

FRAMES, METALLIC DOOR AND WINDOW. Official classification territory. Rating, 402 (410).

FRAMES AND SASH (COMBINED), METALLIC WINDOW. Official classification territory. Rating, 402 (411).

FURNITURE:

Illinois, to and from points in, 290 (308).

Martinsville, Va., to Spokane, Wash., 17.

GASOLINE:

Cushing, Okla., to Little Rock, Ark., 607.

Wilson, Okla., to El Paso, Tex., 753.

GINGER. Seattle and Tacoma, Wash., to New York, N. Y., Chicago, Ill., St. Louis, Mo., Toledo, Ohio, Minnesota Transfer, Minn., Montreal, Canada, and Baltimore, Md., 721.

GLASS, WINDOW:

Fredonia, Kans., to Okmulgee, Okla., 511.

Kansas to South Dakota, 186.

GLASSWARE, CUT. Official classification territory from Pittsburgh, Pa., and Fairmont and Sisterville, W. Va., 423.

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GRAVEL:

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Kickapoo, Ind., to Chicago, Ill., and points in Chicago switching district, 657.

GRINDSTONES, PULP. Empire and Pensinula, Ohio, and Opekiska, W. Va., to Camas, Wash., Pulp, Oreg., and Floriston, Calif., 231.

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IRON. Illinois, to and from points in, 290 (308).
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IRON, BAR. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
IRON, PIG. Illinois, to and from points in, 290 (308).
IRON, ROD. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
IRON, SCRAP:
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Bayway, N. J., to Williamsport, Pa., reconsigned to Newberry, Pa., and reconsigned to Franklin, Pa., 268.
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Kansas City, Mo., from Dermott and other Arkansas points, 339.
Kansas City, Mo., from St. Joseph, Mo., and points in Kansas and Nebraska, 441.
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Chicago, Ill., and St. Louis, Mo., from Denver and Loveland, Colo., and Cheyenne, Wyo., 199.
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New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., 515 (571).
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MILK, CONDENSED:
Neillsville, Wis., to New York, N. Y., and other points in trunk line territory, 228.
Washington to Montana, Wyoming, Colorado, Arizona, Texas, Oklahoma, Nebraska, Missouri, Pennsylvania, New York, and Massachusetts, 665.
MILK, EVAPORATED SKIMMED. De Ridder, La., from Jefferson and Oconomowoc, Wis., 214.
MOLASSES, BLACKSTRAP. Louisiana to Orange and Beaumont, Tex., 661.
MOLDING, METALLIC. Official classification territory. Rating, 402 (412).
MOPS. Chicago, Ill., to Pacific coast terminals, 733.

MULES. Helena, Ark., from Springfield and Lockwood, Mo., and Belleville, Kans., 708.

NAILS. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

NITER CAKE. Carney's Point, N. J., to Norfolk, Va., 499.

NITRATE OF SODA. *See* Soda.

NITROCELLULOSE, WET. Norfolk, Va., to Carney's Point, N. J., 247.

NUTMEGS. Seattle and Tacoma, Wash., to New York, N. Y., Chicago, Ill., St. Louis, Mo., Toledo, Ohio, Minnesota Transfer, Minn., Montreal, Canada, and Baltimore, Md., 721.

NUTS, IRON AND STEEL. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

OIL, COPRA. New Orleans and Baton Rouge, La., to Chicago, Ill., St. Louis, Mo., Brooklyn, N. Y., Kansas City, Kans., and Babbitt and Jersey City, N. J., 154.

OIL, MOTOR LUBRICATING. San Antonio, Tex., to Coffeyville, Kans., 341.

OIL, PALM-KERNEL. New Orleans, La., to Kansas City, Kans., and Buffalo, N. Y., 154.

ORANGES. Lindsay, Calif., to Sidney, Mont., 749.

ORNAMENTS, METALLIC. Official classification territory. Rating, 402 (413).

PACKING-HOUSE PRODUCTS. Illinois, to and from points in, 290 (310).

PALM-KERNEL PRODUCTS. New Orleans, La., to Kansas City, Kans., Buffalo, N. Y., Cedar Rapids, Iowa, and Peoria, Decatur, and Morris, Ill., 154.

PANELS, METALLIC. Official classification territory. Rating, 402 (413).

PAPER, BOOK, PRINTING, AND WRAPPING. Kalamazoo and other Michigan points to eastern trunk line territory, 679.

PEPPER. Seattle and Tacoma, Wash., to New York, N. Y., Chicago, Ill., St. Louis, Mo., Toledo, Ohio, Minnesota Transfer, Minn., Montreal, Canada, and Baltimore, Md., 721.

PETROLEUM:

Coffeyville Kans., to Little Rock, Ark., 35.

Illinois, to and from points in, 290 (310).

PETROLEUM PRODUCTS:

Coffeyville, Kans., to Little Rock, Ark., 35.

Illinois, to and from points in, 290 (310).

Kassel, La. Demurrage, 131.

PILING. Washington, Oregon, Idaho, Montana, and British Columbia to various states east of the Rocky Mountains, 625.

PINS, IRON. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

PIPE, CAST-IRON:

Illinois, to and from points in, 290 (308).

Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

PIPE, WROUGHT-IRON:

Lorain, Ohio. Divisions and absorption of switching charges, 469.

Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

PLASTER, CEMENT FINISHING. Acme, Tex., to Plasterco, Tex., via Altus, Okla., 179.

PLATE, SMOOTHED ZINC. Plymouth and Framingham, Mass., to San Francisco and Los Angeles, Calif., and Portland, Oreg., 265.

PLATE, TACK. Baltimore, Md. Demurrage, 253.
PLOW PARTS AND SHAPES, IRON. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
POLES, CEDAR. Washington, Oregon, Idaho, Montana, and British Columbia to various states east of the Rocky Mountains, 625.
POLISH, FLOOR, O'CEDAR, AND WAX FURNITURE. Portland, Oreg., and other Pacific coast terminals from Chicago, Ill., Racine, Wis., Cincinnati, Ohio, and Boston, Mass., 733.
POSTS, FENCE. Portland, Oreg., to California, Nevada, Arizona, and New Mexico, 357.
POTASH, NITRATE OF. Carney's Point, N. J., to American Lake, Wash., 246.
POTATOES. Minnesota to Burlington and Creston, Iowa, and St. Louis, Mo., 672.
RAGS:
Chicago, Ill., from Denver, Trinidad, and Pueblo, Colo., 203.
Denver, Colo., to Chicago, Ill., 199.
RAILS, OLD:
Banks, Ark., to East St. Louis, Ill., 715.
Denver, Colo., to Kansas City, Mo., reconsigned to Sioux City, Iowa, 137.
East St. Louis, Ill., to Boonville, Ind., 135.
RICE. New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., and Enid, Oklahoma City, and Shawnee, Okla., 515 (571).
RICE, CLEAN. Beaumont, Tex., to New Orleans, La., 428.
RIVETS. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
ROCK BOARD. *See* Board.
RODS, WIRE:
Illinois, to and from points in, 290 (308).
Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
ROOFING, HARD CORRUGATED ASBESTOS. Ambler, Pa., to La Salle, Ill., 271.
ROOFING, PREPARED. Illinois, to and from points in, 290 (310).
ROPE. Beverly, N. J., to New York, N. Y., 337.
ROSIN. New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., 515 (571).
RUBBER, SCRAP. Denver, Colo., to Chicago, Ill., 199.
SALTPETER. Carneys Point, N. J., to American Lake, Wash., 246.
SAND:
Buffalo, N. Y., to Ennerdale, Aloquin, and Flint, N. Y., 619.
Kickapoo, Ind., to Chicago, Ill., and points in Chicago switching district, 657.
Turner, Kans., to Kansas City, Mo.-Kans. switching district, 683.
SAND, GLASS. Silica, Ohio, to Fairmont and Clarksburg, W. Va., 122.
SAND, MOLDING. Utica, Ill., to Beaumont, Tex., 110.
SASH, METALLIC. Official classification territory. Rating, 402 (412).
SAWDUST. Minneapolis, Minn., to Cherokee, Iowa, 29.
SHAVINGS, IVORY-NUT. Rochester, N. Y., to North Birmingham, Ala., 170.
SHEEP. South Dakota to various destinations; car furnishing, 165.
SHEET METAL WORK, BUILDING. Official classification territory. Rating, 402 (414).
SHELLS, CRUSHED. Illinois from Iowa, 290 (311).
SHOES. Illinois, to and from points in, 290 (305).

SHOES, HORSE, MULE, AND OX. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

SHOOKS, YELLOW-PINE BOX. Evergreen, Ala., to Canastota, N. Y., Brattleboro and Essex Junction, Vt., and Highlandtown, Baltimore, Md., 15.

SHUTTERS, METALLIC. Official classification territory. Rating, 402 (413).

SIDING, HARD CORRUGATED ASBESTOS. Ambler, Pa., to La Salle, Ill., 271.

SILICATE OF SODA. *See* Soda.

SODA ASH:

Barberton, Ohio, to Shinglehouse, Pa., 37.

Newark, N. J., to Hopewell, Va., 243.

SODA, NITRATE OF:

Holmes, Mo., from Pensacola, Fla., and New Orleans, La., 725.

New Orleans, La., and Pensacola, Fla., to Fenn, Ark., 24.

Port Richmond, Pa., to Carney's Point, N. J., 347.

SODA, SILICATE OF. Ancor, Ohio, to Red Bank, Ohio, 331.

SPICES. Seattle and Tacoma, Wash., to New York, N. Y., Chicago, Ill., St. Louis, Mo., Toledo, Ohio, Minnesota Transfer, Minn., Montreal, Canada, and Baltimore, Md., 721.

STARCH, CORN. Illinois, to and from points in, 290 (307).

STAVES:

California terminals from Memphis, Tenn., Dallas, Tex., Little Rock, Ark., Alexandria, La., St. Louis, Mo., and Chicago, Ill., 327.

Star City, Ark., to New Orleans, La., 182.

STEEL. Illinois, to and from points in, 290 (308).

STEEL ARTICLES:

Chicago, Ill., to Pacific coast ports, for export, 462.

Illinois, to and from points in, 290 (308).

Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

STEEL, BAR. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.

STEEL, SCRAP:

Illinois, to and from points in, 290 (308).

Kansas City, Mo., from Kansas and Nebraska, 441.

STEEL WORK. Official classification territory. Rating, 402 (407).

STONE, CRUSHED. Tomkins Cove and North Le Roy, N. Y., to points in New York, 619.

STOVES. Illinois, to and from points in, 290 (311).

STRAWBERRIES:

New England from Delaware, Maryland, and Virginia. Minimum weights, 495.

Sanford, Miss., to eastern and central states. Refrigerator express rates, 633.

White Salmon, Wash., to Sioux Falls, S. Dak., 747.

SUGAR, CLARIFIED. New Orleans, La., to Chattanooga, Tenn., 107.

TACK PLATE. *See* plate.

TERRA COTTA. St. Louis, Mo., to New Madrid, Mo., 172.

TIES, RAILROAD. Portland, Oreg., to California, Nevada, Arizona, and New Mexico, 357.

TIMBERS, MINING. Portland, Oreg., to California, Nevada, Arizona, and New Mexico, 357.

TIN FOIL. New York, N. Y., to Winston-Salem, N. C., 33.
TRACTOR, OLD GAS. Fargo, N. Dak., from Edgeley and Goodrich, N. Dak. Rating, 65.
TURPENTINE. New Orleans, La., to Wichita, Hutchinson, Salina, and Topeka, Kans., 515 (571).
UNDERWEAR, COTTON. Little Rock, Ark., from Georgia, Tennessee, and Huntsville, Ala., 119.
WALL BOARD. *See* Board.
WASHERS, IRON AND STEEL. Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill., 688.
WEDGES, MINE. Portland, Oreg., from California, Nevada, Arizona, and New Mexico, 357.
WHEAT:
Chicago, Ill., from Shickley and Dorchester, Nebr., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak., 39.
Culver, Oreg., to Chicago, Ill. Car furnishing, 488.
Culver, Oreg., to Minneapolis, Minn., 101.
Shickley and Dorchester, Nebr., to Chicago, Ill., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak., 39.
WOOD. Corona, N. Mex., to El Paso, Tex., 416 (419).
WOOD, FUEL. Hermansville, Mich., to Mitchell, S. Dak., 467.
ZINC PLATE. *See* Plate.

TABLE OF LOCALITIES.

[The number in parentheses after citation indicates where locality is considered.]

Aberdeen, S. Dak., from Kansas. Window glass, 186.
Aberdeen, S. Dak., from Shickley and Dorchester, Nebr., milled in transit and reshipped to Chicago, Ill., and stored at Lincoln, Nebr. Wheat, 39.
Abernathy, Tex., to Pocatello, Idaho, and Butte and Monida, Mont. Cattle, 597.
Acme, Tex., to Plasterco, Tex., via Altus, Okla. Cement plaster, 179.
Akron, Ohio. Demurrage on lumber, 335.
Alabama to Arkansas. Class rates, 515 (557).
Albany, Minn., to Creston, Iowa, and St. Louis, Mo. Potatoes, 672.
Albuquerque, N. Mex., from Chico, Calif. Matches, 431.
Alexandria, La., to California terminals. Cooperage stock, 327.
Alkali, Ohio, from Cowan, Pa. Coal, 711.
Aloquin, N. Y., from Buffalo and North Le Roy, N. Y. Crushed stone, sand, and gravel, 619.
Altus, Okla., from Acme, Tex., destined to Plasterco, Tex. Cement plaster, 179.
Ambler, Pa., to La Salle, Ill. Hard corrugated roofing and siding, 271.
American Lake, Wash., from Carney's Point, N. J. Saltpeter, 246.
Ancor, Ohio, to Red Bank, Ohio. Silicate of soda, 331.
Arizona from Portland, Oreg. Fir and hemlock lumber, 357.
Arkansas to Kansas City, Mo. Scrap iron, 339.
Arkansas to Memphis, Tenn. Cotton, 515 (546).
Arkansas to and from Memphis, Tenn., St. Louis, Mo., and Natchez, Miss. Class rates, 515.
Arkansas to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Arkansas from New Orleans, La. Class and commodity rates, 515 (573).
Arkansas City, Ark., from St. Louis, Mo. Class rates, 515 (551).
Arkansas City, Kans., from Mason City, Iowa. Fresh salted meats, 433.
Ash Grove, Kans., from Lenwil, La. Yellow-pine lumber, 21.
Aspen Hill, Tenn., to New Orleans, La. Shelled corn, 703.
Atlanta, Ga., to Little Rock, Ark. Knitting factory products, 119.
Atlanta, Ga., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Atlantic ports to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Atlantic seaboard territory to Colorado common points, via Galveston, Tex. Class and commodity rates; marine insurance, 374.
Augusta, Ga., to Little Rock, Ark. Knitting factory products, 119.
Aultman, Ohio, from Nelsonville, Ohio. Coal, 485.
Avon, Minn., to Creston, Iowa. Potatoes, 672.
Ayer, Mass., from North Leominster, Mass. Car-ferry charges, 206.
Babbitt, N. J., from New Orleans, La. Copra oil, 154.
Baltimore, Md. Demurrage on tack plate, 253.
Baltimore, Md., from Evergreen, Ala. Yellow-pine box shooks, 15.

Baltimore, Md., from Seattle and Tacoma, Wash. Ginger, pepper, cassia, and nutmegs, 721.
Baltimore, Md., to Springfield, Mo., via Memphis, Tenn. Cotton-piece goods, 400.
Banks, Ark., to East St. Louis, Ill. Old rails and fastenings, 715.
Barberton, Ohio, to Shinglehouse, Pa. Soda ash, 37.
Baton Rouge, La., to Chicago, Ill. Copra oil, 154.
Bayway, N. J., to Conshohocken, Pa., reconsigned to Coatesville, Pa. Scrap iron, 268.
Bayway, N. J., to Williamsport, Pa., reconsigned to Newberry, Pa., and reconsigned to Franklin, Pa. Scrap iron, 268.
Beaumont, Tex., from Lockport, Southdown, and Matthews, La. Blackstrap molasses, 661.
Beaumont, Tex., to New Orleans, La. Clean rice, 428.
Beaumont, Tex., from Utica, Ill. Molding sand, 110.
Bell City, La., from Mobile, Ala. Fertilizer, 583.
Belleville, Ill., to Montgomery, Ala. Iron and steel articles, 688.
Belleville, Kans., to Helena, Ark. Horses and mules, 708.
Bellewood, Ill., to Portland, Oreg. Metal barrel churns, 345.
Benton, Ill., to Rochester, Winnebago, and Okabena, Minn., reconsigned to other points in Minnesota and South Dakota. Coal, 744.
Berkley, Va. Absorption of switching charges on lumber and forest products, 377.
Beverly, Mass., to Salem, Mass. Car-ferry charges, 206.
Beverly, N. J., to New York, N. Y. Rope, 337.
Billings, Mont., from Minnesota and Wisconsin. Hay, 421.
Billings, Mont., from Monroe and Stanwood, Wash. Condensed milk, 665.
Birmingham, Ala., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Boise, Idaho, from Utah mines. Coal, 718.
Bolton, N. C., to Norfolk and Pinners Point, Va., and points in trunk line and New England territories. Lumber, 595.
Bonne Terre, Mo., from Illinois mines. Coal, 674.
Boonville, Ind., from East St. Louis, Ill. Angle and slice bars, old rails, and track bolts, 135.
Boston, Mass., to Portland, Oreg. O'Cedar polish, mops, and mop handles, 733.
Boston, Mass., to Springfield, Mo., via Memphis, Tenn. Cotton piece goods, 400.
Bourbon, Ind. Demurrage on salvaged barley, 175.
Brattleboro, Vt., from Evergreen, Ala. Yellow-pine box shooks, 15.
Breese, Ill., to Leadwood, Mo. Coal, 674 (676).
Bridger, Mont., from Minnesota and Wisconsin. Hay, 421.
British Columbia to points east of Rocky Mountains. Cedar poles and piling, 625.
Brooklyn, N. Y., to Bourbon, Ind. Salvaged barley, 175.
Brooklyn, N. Y., from New Orleans, La. Copra oil, 154.
Buffalo, N. Y., Absorption of switching charges on grain and grain products, 587.
Buffalo, N. Y. Demurrage and track storage charges on corn meal, 239.
Buffalo, N. Y., to Ennerdale, Aloquin, and Flint, N. Y. Sand and gravel, 619.
Buffalo, N. Y., from New Orleans, La. Palm-kernel oil, 154.
Buffalo, N. Y., from Pennsylvania mines, destined to Toledo, Ohio. Anthracite coal, 220.
Buffalo, N. Y., from Virginia cities. Lumber, 637.
Buffalo Gap, S. Dak., to Des Moines, Iowa. Crude clay, 31.

Buffalo-Pittsburgh line, points east of, from Virginia cities. Lumber, 637.
Buffalo-Pittsburgh territory to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Burlington, Iowa, from Freeport, Minn. Potatoes, 672.
Butte, Mont., from Hereford and Abernathy, Tex. Cattle, 597.
Butte, Mont., from Minnesota and Wisconsin. Hay, 421.
Cairo, Ill., from Mendenhall, Miss., reconsigned to Partridge, Kans. Lumber, 751.
Cairo, Ill., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Cairo, Ill., from Sheboygan, Wis. Class rates, 140.
Caldwell, Idaho, from Utah mines. Coal, 718.
California to Madeline, Calif., via Reno, Nev. Joint through class rates, 398.
California from New York, N. Y. Cigarettes, 69.
California from Portland, Oreg. Fir and hemlock lumber, 357.
California to and from Salt Lake City, Utah. Passenger fares; divisions, 71.
California terminals from Memphis, Tenn., Dallas Tex., Little Rock, Ark., Alexandria, La., St. Louis, Mo., and Chicago, Ill. Cooperage stock, 327.
Camas, Wash., from Empire and Peninsula, Ohio, and Opekiska, W. Va. Pulp grindstones, 231.
Camden, Ark., from St. Louis, Mo. Class rates, 515 (551).
Camden, N. J., from Lockport, N. Y. Chip board, 218.
Camp Lewis, Wash., from Carneys Point, N. J. Saltpeter, 246.
Camp Sherman, Ohio, to Parma, Ohio. Manure, 324.
Canastota, N. Y., from Evergreen, Ala. Yellow-pine box shooks, 15.
Caney, Kans., to South Dakota. Window glass, 186.
Cape Girardeau, Mo., to Illinois. Cement, 315.
Carney's Point, N. J., to American Lake, Wash. Saltpeter, 246.
Carney's Point, N. J., from Hopewell, Va. Sulphuric acid, 612.
Carney's Point, N. J., from Norfolk, Va. Wet nitrocellulose, 247.
Carney's Point, N. J., to Norfolk, Va. Niter cake, 499.
Carney's Point, N. J., from Port Richmond, Pa. Nitrate of soda, 347.
Carolina territory to Arkansas. Class and commodity rates, 515 (557).
Carrollton, Ky., to and from trunk line territory. Class rates, 697.
Caseyville, Ill., from various points. Leatherboard, 394.
Cashmere, Wash., to Portland, Oreg. Cull apples, 260.
Castle Gate, Utah, to Boise, Nampa, and Caldwell, Idaho. Coal, 718.
Cedar Rapids, Iowa, from New Orleans, La. Palm-kernel meal, 154.
Central freight association territory to Murfreesboro, Columbia, Dickson, Lebanon, Gallatin, and Watertown, Tenn. Class and commodity rates, 648.
Central freight assoriation territory from Virginia cities. Lumber, 637.
Centralia, Ill., from Sheboygan, Wis. Class rates, 140.
Champaign, Ill., to South Akron, Ohio. Machinery and machinery parts, 277.
Chapman, Pa., to Lugoff, S. C. Cement, 615.
Charlotte, N. Y., from Cleveland, Ohio. Mill cinder, 449.
Chattanooga, Tenn., to Little Rock, Ark. Knitting factory products, 119.
Chattanooga, Tenn., from New Orleans, La. Clarified sugar, 107.
Chattanooga, Tenn., from Theba, Ala., destined to Philipsburg, Pa., and held in transit at Philadelphia, Pa. Lumber, 225.
Chehalis, Wash., to Texas, Oklahoma, Wyoming, Colorado, Nebraska, Missouri, Pennsylvania, New York, and Massachusetts. Condensed milk, 665.
Cherokee, Iowa, from Minneapolis, Minn. Sawdust, 29.
Chester, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.

Cheyenne, Wyo., to Chicago, Ill. Scrap metals, 199.
Chicago, Ill. Terminal charges, 363.
Chicago, Ill., to California terminals. Cooperage stock, 327.
Chicago, Ill., from Culver, Oreg. Wheat; car furnishing, 488.
Chicago, Ill., from Denver, Colo., and Cheyenne, Wyo. Rags and scrap rubber and metals, 199.
Chicago, Ill., from Denver, Pueblo., and Trinidad, Colo. Rags, junk, and scrap copper and brass, 203.
Chicago, Ill., from Kickapoo, Ind. Sand and gravel, 657.
Chicago, Ill., from Mason City, Iowa. Fresh salted meats, 433.
Chicago, Ill., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Chicago, Ill., from New Orleans and Baton Rouge, La. Copra oil, 154.
Chicago, Ill., to Pacific coast ports, for export. Iron and steel articles, 462.
Chicago, Ill., from Parma, Mo., reconsigned at St. Louis, Mo. Rough oak lumber, 343.
Chicago, Ill., to Portland, Oreg., and other Pacific coast terminals. O'Cedar polish, wax floor and furniture polish, mops, and mop handles, 733.
Chicago, Ill., from Seattle and Tacoma, Wash. Ginger, pepper, cassia, and nutmegs, 721.
Chicago, Ill., from Shickley and Dorchester, Nebr., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak. Wheat, 39.
Chicago, Ill., from Texarkana, Ark.-Tex. Scrap iron, 730.
Chicago, Ill., from Washington, Oregon, Idaho, Montana, and British Columbia. Cedar poles and piling, 625.
Chicago switching district. Industrial switching, 194.
Chicago switching district from Kickapoo, Ind. Sand and gravel, 657.
Chico, Calif., to Albuquerque, N. Mex., and Holbrook and Prescott, Ariz. Matches, 431.
Childress, Tex., from Iota and Welsh, La. Rice bran, 19.
Chile to New Orleans, La., and Pensacola, Fla., destined to Fenn, Ark. Nitrate of soda, 24.
Cincinnati, Ohio, to Montgomery, Ala. Iron and steel articles, 688.
Cincinnati, Ohio, to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Cincinnati, Ohio, to Portland, Oreg. O'Cedar polish, mops, and mop handles, 733.
Cincinnati, Ohio, from Virginia cities. Lumber, 637.
Clarksburg, W. Va., from Silica, Ohio. Glass sand, 122.
Cleveland, Ohio, to Charlotte, N. Y. Mill cinder, 449.
Cleveland, Ohio, from Virginia cities. Lumber, 637.
Cleveland, Ohio, district. Divisions, absorption of switching charges, 353.
Cleveland-Lorain district, Ohio, to and from interstate points. Absorption of switching charges on coal, coke, and wrought-iron pipe, 469.
Clifford, Ill., to Bonne Terre, Mo. Coal, 674 (677).
Coatesville, Pa., from Bayway, N. J., reconsigned at Conshohocken, Pa. Scrap iron, 268.
Coffeyville, Kans., to Kansas City, Mo. Scrap iron and steel, 441.
Coffeyville, Kans., to Little Rock, Ark. Petroleum and products, 35.
Coffeyville, Kans., from San Antonio, Tex. Motor lubricating oil, 341.
Coffeyville, Kans., to South Dakota. Window glass, 186.
Colorado from Washington. Condensed milk, 665.

Colorado common points from Atlantic seaboard territory, via Galveston, Tex. Class and commodity rates; marine insurance, 374.
Columbia, Tenn., to New Orleans, La. Shelled corn, 703.
Columbia, Tenn., from various points. Class and commodity rates, 648.
Columbus, Mont., from Minnesota and Wisconsin. Hay, 421.
Columbus, Ohio, from Virginia cities. Lumber, 637.
Conshohocken, Pa., from Bayway, N. J., reconsigned to Coatesville, Pa. Scrap iron, 268.
Cornell, Wis., to various destinations. Wall board; ratings, 257.
Corona, N. Mex., to El Paso, Tex. Wood, 416 (419).
Cowan, Pa., to Alkali, Ohio. Coal, 711.
Crandon, S. Dak., from Zeigler, Ill., reconsigned to Hitchcock, S. Dak. Coal, 744.
Creston, Iowa, from Albany and Avon, Minn. Potatoes, 672.
Cudahy, Wis., from Mason City, Iowa. Fresh salted meats, 433.
Culver, Oreg., to Chicago, Ill. Wheat; car furnishing, 488.
Culver, Oreg., to Minneapolis, Minn. Wheat, 101.
Cushing, Okla., to Little Rock, Ark. Gasoline, 607.
Dallas, Tex., to California terminals. Cooperage stock, 327.
Dallas, Tex., from Mason City, Iowa. Fresh salted meats, 433.
Dalton, Ga., to Little Rock, Ark. Knitting factory products, 119.
De Ridder, La., from Jefferson and Oconomowoc, Wis. Evaporated skimmed milk, 214.
Decatur, Ill., from New Orleans, La. Palm-kernel meal, 154.
Delaware to New England. Strawberries, 495.
Denver, Colo., from Atlantic seaboard territory, via Galveston, Tex. Class and commodity rates; marine insurance, 374.
Denver, Colo., to Chicago, Ill. Rags and scrap rubber and metals, 199.
Denver, Colo., to Chicago, Ill. Rags, junk, and scrap copper and brass, 203.
Denver, Colo., to Kansas City, Mo., reconsigned to Sioux City, Iowa. Old rails and old rail fastenings, 137.
Denver, Colo., from Philadelphia and Marcus Hook, Pa. Congoleum, 163.
Dermott, Ark., to Kansas City, Mo. Scrap iron, 339.
Des Moines, Iowa, from Buffalo Gap, S. Dak. Crude clay, 31.
Detroit, Mich., from East Chicago, Ind. Mill cinder, 669.
Dewey, Okla., from Pittsburg district, Kans. Coal, 1.
Dickson, Tenn., from various points. Class and commodity rates, 648.
Dixon, Ill., from Milwaukee, Wis. Beer, 610.
Dorchester, Nebr., to Chicago, Ill., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak. Wheat, 39.
Duluth, Minn., to Montana. Hay, 421.
East Chicago, Ind., to Detroit, Mich. Mill cinder, 669.
East St. Louis, Ill. Demurrage on lumber, 741.
East St. Louis, Ill., from Banks, Ark. Old rails and fastenings, 715.
East St. Louis, Ill., to Boonville, Ind. Angle and slice bars, old rails, and track bolts, 135.
East St. Louis, Ill., to Montgomery, Ala. Iron and steel articles, 685.
Eastern cities to Springfield, Mo., via Memphis, Tenn. Cotton piece goods, 400.
Eastern ports to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Eastern seaboard points to Springfield, Mo., via Memphis, Tenn. Cotton piece goods, 400.

Eastern shore of Virginia and Maryland to New England. Strawberries, 495.
Eastern trunk line territory from Kalamazoo, Mich. Printing, book, and wrapping paper, 679.
Eastern trunk line territory from Peoria, Ill., originating at points in Illinois. Grain, 42.
Edgeley, N. Dak., to Fargo, N. Dak. Old thrashing engines and gas tractor, 65.
Edgerly, La., from Mobile, Ala. Fertilizer, 583.
El Dorado, Ark., from St. Louis, Mo. Class rates, 515 (551).
El Paso, Tex. Demurrage rules and charges, 416.
El Paso, Tex., from New Mexico, Oklahoma, and Texas. Cream, 425.
El Paso, Tex., from Wilson, Okla. Gasoline, 753.
Eldorado, Ill., from Cape Girardeau, Mo. Cement, 315.
Empire, Ohio, to Camas, Wash., Pulp, Oreg., and Floriston, Calif. Pulp grindstones, 231.
Emporium, Pa., to Ironton, Ohio. High explosives, 177.
Emporium, Pa., from South Windsor, Conn. High explosives, 333.
Enid, Okla., from New Orleans, La. Commodity rates, 515 (571).
Ennerdale, N. Y., from Buffalo and North Le Roy, N. Y. Crushed stone, sand, and gravel, 619.
Equality, Ill. Coal-car distribution, 491.
Essex Junction, Vt., from Evergreen, Ala. Yellow-pine box shooks, 15.
Evansville, Ind., to Montgomery, Ala. Iron and steel articles, 688.
Evansville, Ind., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Evergreen, Ala., to Canastota, N. Y., Brattleboro and Essex Junction, Vt., and Highlandtown (Baltimore), Md. Yellow-pine box shooks, 15.
Fairmont, W. Va., to official classification territory. Cut glassware, 423.
Fairmont, W. Va., from Silica, Ohio. Glass sand, 122.
Fargo, N. Dak., from Edgeley and Goodrich, N. Dak. Old thrashing engines and gas tractor, 65.
Fayville, Ill., to Flat River, Mo. High explosives, 350.
Felsenthal, Ark., from Natchez, Miss. Class rates, 515 (551).
Fenn, Ark., from New Orleans, La., and Pensacola, Fla. Nitrate of soda, 24.
Fetzer, Ill., to and from points on the N. Y. C. R. R. Through routes, 52.
Flandereau, S. Dak., from Benton, Ill., originally consigned to Okabena, Minn. Coal, 744.
Flat River, Mo., from Fayville, Ill. High explosives, 350.
Flint, Mich., to Fort Worth, Tex. Gasoline engines, 601.
Flint, N. Y., from Buffalo and North Le Roy, N. Y. Crushed stone, sand, and gravel, 619.
Florida to Arkansas. Class rates, 515 (557).
Floriston, Calif., from Empire and Peninsula, Ohio, and Opekiska, W. Va. Pulp grindstones, 213.
Fordyce, Ark., from St. Louis, Mo. Class rates, 515 (551).
Fort Scott, Kans., to Kansas City, Mo. Scrap iron and steel, 441.
Fort Smith, Ark, from Tontitown, Ark. Apples, 234.
Fort Smith, Ark., from western trunk line territory. Class and commodity rates, 515 (555).
Fort Worth, Tex., from Flint, Mich. Gasoline engines, 601.
Framingham, Mass., to San Francisco and Los Angeles, Calif., and Portland, Oreg. Smoothed zinc plate, 265.
Franklin, Pa., from Bayway, N. J., reconsigned at Williamsport, Pa., and Newberry, Pa. Scrap iron, 268.

Fredonia, Kans., to Okmulgee, Okla. Window glass, 511.
Freeport, Minn., to Burlington, Iowa. Potatoes, 672.
Fresno, Calif., from Memphis, Tenn., Dallas, Tex., Little Rock, Ark., Alexandria, La., St. Louis, Mo., and Chicago, Ill. Cooperage stock, 327.
Gainesville, Ga., to Little Rock, Ark. Knitting factory products, 119.
Gallatin, Tenn., from various points. Class and commodity rates, 648.
Galveston, Tex., from Atlantic seaboard territory, destined to Colorado common points. Class and commodity rates; marine insurance, 374.
Gas belt district, Kans.-Okla., to South Dakota. Window glass, 186.
Georgia to Arkansas. Class rates, 515 (557).
Georgia to Little Rock, Ark. Knitting factory products, 119.
Gibbstown, N. J., from Hopewell, Va. Sulphuric acid, 612.
Glasgow, Mont., from Monroe and Stanwood, Wash. Condensed milk, 665.
Goodrich, N. Dak., to Fargo, N. Dak. Old thrashing engines and gas tractor, 65.
Grand Island, Nebr., to Kansas City, Mo. Scrap iron and steel, 441.
Great Bend, Kans., to Kansas City, Mo. Scrap iron and steel, 441.
Great Falls, Mont., from Monroe and Stanwood, Wash. Condensed milk, 665.
Gueydan, La., from Mobile, Ala. Fertilizer, 583.
Gulf ports to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Haire, La., from Mobile, Ala. Fertilizer, 583.
Hannibal, Mo., from Sheboygan, Wis. Class rates, 140.
Hayes, La., from Mobile, Ala. Fertilizer, 583.
Helena, Ark., from Springfield and Lockwood, Mo., and Belleville, Kans. Horses and mules, 708.
Helper, Utah, to Boise, Nampa, and Caldwell, Idaho. Coal, 718.
Herculaneum, Mo., from Illinois mines. Coal, 674.
Hereford, Tex., to Pocatello, Idaho, and Butte and Monida, Mont. Cattle, 597.
Herkimer, N. Y., from various points. Leatherboard, 394.
Hermansville, Mich., to Mitchell, S. Dak. Fuel wood, 467.
Herrin, Ill., to Bonne Terre, Mo. Coal, 674 (677).
Highland Mills, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
Highlandtown (Baltimore), Md., from Evergreen, Ala. Yellow-pine box-shooks, 15.
Hipple, La., from Mobile, Ala. Fertilizer, 583.
Hitchcock, S. Dak., from Zeigler, Ill., originally consigned to Crandon, S. Dak. Coal, 744.
Holbrook, Ariz., from Chico, Calif. Matches, 431.
Holland, Mich. Demurrage on coal, 617.
Holmes, Mo., from Pensacola, Fla., and New Orleans, La. Nitrate of soda, 725.
Holmwood, La., from Mobile, Ala. Fertilizer, 583.
Hopewell, Va., to Gibbstown and Carney's Point, N. J. Sulphuric acid, 612.
Hopewell, Va., from Newark, N. J. Soda ash, 243.
Hot Springs, Ark., from St. Louis, Mo. Class rates, 515 (551).
Howells, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
Hume, Mo., to South Fort Smith, Ark. Slack coal, 133.
Huntsville, Ala., to Little Rock, Ark. Knitting factory products, 119.
Huron, S. Dak., from Kansas. Window glass, 186.
Hutchinson, Kans., from Mason City, Iowa. Fresh salted meats, 433.
Hutchinson, Kans., from New Orleans, La. Commodity rates, 515 (571).
Idaho to points east of Rocky Mountains. Cedar poles and piling, 625.
Illinois. Rating and classification of various commodities between points in, 290.

Illinois from Cape Girardeau, Mo. Cement, 315.
Illinois to Peoria, Ill., reshipped to points in eastern trunk line territory. Grain, 42.
Illinois from Sheboygan, Wis. Class rates, 140.
Illinois mines to Bonne Terre, Herculaneum, and other points in Missouri. Coal, 674.
Illinois mines to Minnesota and South Dakota. Coal, 744.
Indianapolis, Ind., from Virginia cities. Lumber, 637.
Iota, La., to Childress, Tex. Rice bran, 19.
Iota, La., from Mobile, Ala. Fertilizer, 583.
Iowa from Mobile, Ala. Fertilizer, 583.
Ironton, Ohio, from Emporium, Pa. High explosives, 177.
Jackson, Minn., from Benton, Ill., originally consigned to Winnebago, Minn. Coal, 744.
Jamesville, N. Y., to Solvay, N. Y. Limestone, 280.
Jefferson, Wis., to De Ridder, La. Evaporated skimmed milk, 214.
Jennie, Ark., to Kansas City, Mo. Scrap iron, 339.
Jennings, La., from Mobile, Ala. Fertilizer, 583.
Jersey City, N. J. Demurrage charges on hay, 117.
Jersey City, N. J., from New Orleans, La. Copra oil, 154.
Kalamazoo, Mich., to eastern trunk line territory. Printing, book, and wrapping paper, 679.
Kansas to Kansas City, Mo. Scrap iron and steel, 441.
Kansas to Kassel, La. Petroleum products, 131.
Kansas from New Orleans, La. Class and commodity rates, 515 (566, 571).
Kansas from Pikeview, Colo. Lignite coal, 249.
Kansas to South Dakota. Window glass, 186.
Kansas City, Kans., from New Orleans, La. Copra oil and palm-kernel oil, 154.
Kansas City, Kans., to Oklahoma City, Okla. Fresh meats and dressed beef, 691.
Kansas City, Mo., from Arkansas. Scrap iron, 339.
Kansas City, Mo., from Denver, Colo., reconsigned to Sioux City, Iowa. Old rails and old rail fastenings, 137.
Kansas City, Mo., from Mason City, Iowa. Fresh salted meats, 433.
Kansas City, Mo., to and from Memphis, Tenn. Class rates, 515 (558).
Kansas City, Mo., from Rockford, Ill. Rock board. 262.
Kansas City, Mo., from St. Joseph, Mo., and points in Kansas and Nebraska. Scrap iron and steel, 441.
Kansas City, Mo.-Kans., switching district from Turner, Kans. Sand, 683.
Kansas gas belt to South Dakota. Window glass, 186.
Kaplan, La., from Mobile, Ala. Fertilizer, 583.
Kassel, La. Demurrage on petroleum products, 131.
Kent, Wash., to Tucson, Ariz. Condensed milk, 665.
Kentucky to Arkansas. Class rates, 515 (557).
Keokuk, Iowa, from Sheboygan, Wis. Class rates, 140.
Kickapoo, Ind., to Chicago, Ill., and points in Chicago switching district. Sand and gravel, 657.
Knoxville, Tenn., to Little Rock Ark. Knitting factory products, 119.
La Salle, Ill., from Ambler, Pa. Hard corrugated roofing and siding, 271.
Lacassine, La., from Mobile, Ala. Fertilizer. 583.
Lake Arthur, La., from Mobile, Ala. Fertilizer, 583.
Lake Village, Ark., to Kansas City, Mo. Scrap iron, 339.
Lancaster, Ohio, from various points. Leatherboard, 394.

Laurel, Mont., from Minnesota and Wisconsin. Hay, 421.
Le Roy, N. Y., to Ennerdale, Aloquin, and Flint, N. Y. Crushed stone, 619 (624).
Leadwood, Mo., from Breese, Ill. Coal, 674 (676).
Lebanon, Tenn., from various points. Class and commodity rates, 648.
Lenwil, La., to Ash Grove, Kans. Yellow-pine lumber, 21.
Libby, Mont., from Monroe and Stanwood, Wash. Condensed milk, 665.
Lincoln, Nebr., to Kansas City, Mo. Scrap iron and steel, 441.
Lincoln, Nebr., from Shickley and Dorchester, Nebr., forwarded to Aberdeen, S. Dak., there milled, and reshipped to Chicago, Ill. Wheat, 39.
Lindsay, Calif., to Sidney, Mont. Oranges and lemons, 749.
Little Rock, Ark., to California terminals. Cooperage stock, 327.
Little Rock, Ark., from Coffeyville, Kans. Petroleum and products, 35.
Little Rock, Ark., from Cushing, Okla. Gasoline, 607.
Little Rock, Ark., from Georgia, Tennessee, and Huntsville, Ala. Knitting factory products, 119.
Livingston, Mont., from Minnesota and Wisconsin. Hay, 421.
Lockport, La., to Orange and Beaumont, Tex. Blackstrap molasses, 661.
Lockport, N. Y., to Camden, N. J. Chip board, 218.
Lockwood, Mo., to Helena, Ark. Horses and mules, 708.
Lorain, Ohio, to and from interstate points. Divisions and absorption of switching charges on wrought iron pipe, coal, and coke, 469.
Los Angeles, Calif., from Plymouth and Framingham, Mass. Smoothed zinc plate, 265.
Louisiana from Mobile, Ala. Fertilizer, 583.
Louisiana to Orange and Beaumont, Tex. Blackstrap molasses, 661.
Louisiana, Mo., from Sheboygan, Wis. Class rates, 140.
Louisville, Ky., to Montgomery, Ala. Iron and steel articles, 688.
Louisville, Ky., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Louisville, Ky., from Virginia cities. Lumber, 637.
Loveland, Colo., to St. Louis, Mo. Scrap metals, 199.
Lugoff, S. C., from Chapman, Pa. Cement, 615.
Lutcher, La., to New Orleans, La., reshipped to Violet, La. Lumber, 236.
McGehee, Ark., from St. Louis, Mo. Class rates, 515 (551).
Macon, Ga., to Little Rock, Ark. Knitting factory products, 119.
Madeline, Calif., from San Francisco, Oakland, Sacramento, and other California points, via Reno, Nev. Joint through class rates, 398.
Malvern, Ark., from St. Louis, Mo. Class rates, 515 (551).
Manitowoc, Wis. Demurrage and reconsignment charges on lumber, 149.
Marcus Hook, Pa., to Denver, Colo. Congoleum, 163.
Martinsville, Va., to Spokane, Wash. Furniture, 17.
Maryland to New England. Strawberries, 495.
Mason City, Iowa, to Chicago, Ill., Cudahy, Wis., St. Louis and Kansas City, Mo., Wichita, Arkansas City, and Hutchinson, Kans., and Dallas, Tex. Fresh salted meats, 433.
Massachusetts from Washington. Condensed milk, 665.
Matthews, La., to Orange and Beaumont, Tex. Blackstrap molasses, 661.
Mattoon, Ill., from Sheboygan, Ill. Class rates, 140.
Mechanicsburg, Ill., to and from points on the N. Y. C. R. R. Through routes, 52.
Memphis, Tenn., to and from Arkansas, Oklahoma, and Missouri. Class rates, 515.

Memphis, Tenn., from Boston, Mass., New York, N. Y., Philadelphia, Pa., and Baltimore, Md., destined to Springfield, Mo. Cotton piece goods, 400.
Memphis, Tenn., to California terminals. Cooperage stock, 327.
Memphis, Tenn., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Mendenhall, Miss., to Cairo, Ill., reconsigned to Partridge, Kans. Lumber, 751.
Merryville, La., to Orange, Tex. Lumber, 104.
Mexico to New Orleans, La., destined to Wichita, Hutchinson, Salina, and Topeka, Kans. Straw hats, 515 (571).
Miami, Okla., from New Orleans, La., and Mobile, Ala. Bananas, 605.
Michigan to eastern trunk line territory. Printing, book, and wrapping paper, 679.
Middlesborough territory to Arkansas. Class and commodity rates, 515 (557).
Midland, La., from Mobile, Ala. Fertilizer, 583.
Millstadt, Ill. Distribution of coal cars, 502.
Milwaukee, Wis., to Dixon, Ill. Beer, 610.
Minneapolis, Minn., to Cherokee, Iowa. Sawdust, 29.
Minneapolis, Minn., from Culver, Oreg. Wheat, 101.
Minneapolis, Minn., from Rockford, Ill. Rock board, 262.
Minnesota from Benton and Zeigler, Ill., reconsigned to other points in Minnesota and South Dakota. Coal, 744.
Minnesota to Burlington and Creston, Iowa, and St. Louis, Mo. Potatoes, 672.
Minnesota to Montana. Hay, 421.
Minnesota Transfer, Minn., from Seattle and Tacoma, Wash. Ginger, pepper, cassia, and nutmegs, 721.
Mississippi to Arkansas. Class rates, 515 (557).
Mississippi River crossings (lower) to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Missouri from Illinois mines. Coal, 674.
Missouri from Memphis, Tenn. Class rates, 515.
Missouri from Pikeview, Colo. Lignite coal, 249.
Missouri from Washington. Condensed milk, 665.
Missouri River cities from New Orleans, La. Class and commodity rates, 515 (566).
Mitchell, S. Dak., from Hermansville, Mich. Fuel wood, 467.
Mitchell, S. Dak., from Kansas. Window glass, 186.
Mobile, Ala., to Louisiana. Fertilizer, 583.
Mobile, Ala., to Miami, Okla. Bananas, 605.
Mobile, Ala., to Savannah, Ga., for export. Compressed cotton, 146.
Monida, Mont., from Hereford and Abernathy, Tex. Cattle, 597.
Monitor, Wash., to Portland, Oreg. Cull apples, 260.
Monroe, La., to Arkansas. Class rates, 515 (553).
Monroe, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
Monroe, Wash., to Montana, Wyoming, Colorado, Texas, Oklahoma, Nebraska, Missouri, Pennsylvania, New York, and Massachusetts. Condensed milk, 665.
Montana from Minnesota and Wisconsin. Hay, 421.
Montana to points east of Rocky Mountains. Cedar poles and piling, 625.
Montana from Washington. Condensed milk, 665.
Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., and East St. Louis and Belleville, Ill. Iron and steel articles, 688.
Monticello, Ark., from St. Louis, Mo. Class rates, 515 (551).

Montreal, Canada, from Seattle and Tacoma, Wash. Ginger, pepper, cassia, and nutmegs, 721.
Morris, Ill., from New Orleans, La. Palm-kernel meal, 154.
Morse, La., from Mobile, Ala. Fertilizer, 583.
Mosinee, Wis., to Manitowoc, Wis., reconsigned to Mount Pleasant, Mich. Lumber, 149.
Mount Pleasant, Mich., from Mosinee, Wis., reconsigned at Manitowoc, Wis. Lumber, 149.
Mount Vernon, Ill., from Sheboygan, Wis. Class rates, 140.
Mount Vernon, Wash., to Texas, Oklahoma, Wyoming, Colorado, Nebraska, Missouri, Pennsylvania, New York, and Massachusetts. Condensed milk, 665.
Mountainville, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
Murfreesboro, Tenn., from various points. Class and commodity rates, 648.
Murphysboro, Ill., to Bonne Terre, Mo. Coal, 674 (677).
Nampa, Idaho, from Utah mines. Coal, 718.
Naravisa, N. Mex., to El Paso, Tex. Cream, 425.
Nashville, Tenn., to Little Rock, Ark. Knitting factory products, 119.
Nashville, Tenn., from various points. Class and commodity rates; fourth section, 648.
Natalbany, La. Interchange switching, 113.
Natchez, Miss., to Arkansas and Oklahoma. Class rates, 515 (551).
Nebraska to Kansas City, Mo. Scrap iron and steel, 441.
Nebraska from Pikeview, Colo. Lignite coal, 249.
Nebraska from Washington. Condensed milk, 665.
Neillsville, Wis., to New York, N. Y., and other points in trunk line territory. Condensed milk, 228.
Nelsonville, Ohio, to Aultman, Ohio. Coal, 485.
Nevada from Portland, Oreg. Fir and hemlock lumber, 357.
New Bedford, Mass. Transportation of coal from wharves to plant, 320.
New Bedford, Mass., to New York, N. Y. Brass eyelets, 274.
New England from Delaware, Maryland, and Virginia. Strawberries, 495.
New England territory from Bolton, N. C. Lumber, 595.
New Hampton, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
New Madrid, Mo., from St. Louis, Mo. Terra cotta, 172.
New Mexico to El Paso, Tex. Cream, 425.
New Mexico from Portland, Oreg. Fir and hemlock lumber, 357.
New Orleans, La., from Beaumont, Tex. Clean rice, 428.
New Orleans, La., to Chattanooga, Tenn. Clarified sugar, 107.
New Orleans, La., to Chicago, Peoria, Decatur, and Morris, Ill., St. Louis, Mo., Kansas City, Kans., Cedar Rapids, Iowa, Buffalo and Brooklyn, N. Y., and Jersey City and Babbitt, N. J. Copra oil products and palm-kernel products, 154.
New Orleans, La., from Columbia, Pulaski, and Aspen Hill, Tenn. Shelled corn, 703.
New Orelans, La., to Fenn, Ark. Nitrate of Soda, 24.
New Orleans, La., to Holmes, Mo. Nitrate of soda, 725.
New Orleans, La., to Miami, Okla. Bananas, 605.
New Orleans, La., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
New Orleans, La., from Rolling Fork, Miss. Copra cake, 154.
New Orleans, La., from Star City, Ark. Staves and heading, 182.
New Orleans, La., to Violet, La., originating at Lutcher, La. Lumber, 236.

New Orleans, La., to Wichita, Salina, and other points in Kansas, Oklahoma, and Arkansas. Class and commodity rates 515 (566, 573).
New York from Buffalo, Tomkins Cove, and North Le Roy, N. Y. Crushed stone, sand, and gravel, 619.
New York from Washington. Condensed milk, 665.
New York, N. Y., from Beverly, N. J. Rope, 337.
New York, N. Y., to California, Oregon, and Washington. Cigarettes, 69.
New York, N. Y., to Colorado common points, via Galveston, Tex. Class and commodity rates; marine insurance, 374.
New York, N. Y., from Kalamazoo and other Michigan points. Book, printing, and wrapping paper, 679.
New York, N. Y., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
New York, N. Y., from Neillsville, Wis. Condensed milk, 228.
New York, N. Y., from New Bedford, Mass. Brass eyelets, 274.
New York, N. Y., from Pittsburgh, Pa. Cut glassware, 423.
New York, N. Y., from Seattle and Tacoma, Wash. Ginger, pepper, cassia, and nutmegs, 721.
New York, N. Y., to Springfield, Mo., via Memphis, Tenn. Cotton piece goods, 400.
New York, N. Y., from Vandergrift, Pa., reconsigned at Baltimore, Md. Tack plate, 253.
New York, N. Y., to Winston-Salem, N. C. Tin foil, 33.
Newark, N. J., to Hopewell, Va. Soda ash, 243.
Newberry, Pa., from Bayway, N. J., reconsigned at Williamsport, Pa., and then reconsigned to Franklin, Pa. Scrap iron, 268.
Newport News, Va., to c. f. a. territory and points east of Buffalo-Pittsburgh line. Lumber, 637.
Niblett, La., from Mobile, Ala. Fertilizer, 583.
Norfolk, Va. Absorption of switching charges on lumber and forest products, 377.
Norfolk, Va., from Bolton, N. C. Lumber, 595.
Norfolk, Va., from Carney's Point, N. J. Niter cake, 499.
Norfolk, Va., to Carney's Point, N. J. Nitrocellulose, 247.
Norfolk, Va., to c. f. a. territory and points east of Buffalo-Pittsburgh line. Lumber, 637.
Norfolk, Va., to Murfreesboro, Columbia, Dickson, Lebanon, Gallatin, and Watertown, Tenn. Class and commodity rates, 648.
Norfolk district, Va. Absorption of switching charges on lumber and forest products, 377.
North Birmingham, Ala., from Rochester, N. Y. Ivory-nut shavings, 170.
North Carolina to Norfolk district, Va. Lumber and forest products, 377.
North Le Roy, N. Y., to points in New York. Crushed stone, 619.
North Leominster, Mass., to Ayer, Mass. Car-ferry charges, 206.
Oakland, Calif., to Madeline, Calif., via Reno, Nev. Joint through class rates, 398.
Oconomowoc, Wis., to De Ridder, La. Evaporated skimmed milk, 214.
Official classification territory. Ratings on building sheet metal work, 402.
Official classification territory. Ratings on scrap leatherboard, 394.
Official classification territory from Pittsburgh, Pa., and Fairmont and Sistersville, W. Va. Cut glassware, 423.
Ohio to Jersey City, N. J., reconsigned at Sayre, Pa. Hay, 117.

Ohio River crossings to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Okabena, Minn., from Benton, Ill., reconsigned to Flandreau, S. Dak. Coal, 744.
Oklahoma to El Paso, Tex. Cream, 425.
Oklahoma to Kassel, La. Petroleum products, 131.
Oklahoma to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Oklahoma from New Orleans, La. Class and commodity rates, 515 (566, 570).
Oklahoma from Pikeview, Colo. Lignite coal, 249.
Oklahoma from St. Louis, Mo., and points in Arkansas. Class rates, 515 (555, 561).
Oklahoma from Washington. Condensed milk, 665.
Oklahoma City, Okla., from Kansas City, Kans. Fresh meats and dressed beef, 691.
Oklahoma City, Okla., from New Orleans, La. Commodity rates, 515 (571).
Okmulgee, Okla., from Fredonia, Kans. Window glass, 511.
Okmulgee, Okla., to Thibodaux, La. Glass soda bottles, 8.
Olney, Ill., from Sheboygan, Wis. Class rates, 140.
Omaha, Nebr., from New Orleans, La. Class rates, 515 (572).
Opekiska, W. Va., to Camas, Wash., Pulp, Oreg., and Floriston, Calif. Pulp grindstones, 231.
Orange, Tex., from Lockport, Southdown, and Matthews, La. Blackstrap Molasses, 661.
Orange, Tex., from Merryville, La. Lumber, 104.
Oregon from New York, N. Y. Cigarettes, 69.
Oregon to points east of Rocky Mountains. Cedar poles and piling, 625.
Otisville, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
Owatonna, Minn., from Benton, Ill., originally consigned to Rochester, Minn. Coal, 744.
Oxford Depot, N. Y., from Tomkins Cove, N. Y. Crushed stone, 619.
Pacific coast from Plymouth and Framingham, Mass. Smoothed zinc plate, 265.
Pacific coast ports from Chicago, Ill., Iron and steel articles, 462.
Pacific coast terminals from Chicago, Ill. O'Cedar polish, mops, and mop handles, 733.
Paducah, Ky., to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn. Class and commodity rates, 648.
Parma, Mo., to St. Louis, Mo., reconsigned to Chicago, Ill. Rough oak lumber, 343.
Parma, Ohio, from Camp Sherman, Ohio. Manure, 324.
Partridge, Kans., from Mendenhall, Miss., reconsigned at Cairo, Ill. Lumber, 751.
Peninsula, Ohio, to Camas, Wash., Pulp, Oreg., and Floriston, Calif. Pulp grindstones, 231.
Pennsylvania from Washington. Condensed milk, 665.
Pennsylvania mines to Toledo, Ohio, via Buffalo, N. Y. Anthracite coal, 220.
Pensacola, Fla., to Fenn, Ark. Nitrate of soda, 24.
Pensacola, Fla., to Holmes, Mo. Nitrate of soda, 725.
Peoria, Ill., from other Illinois points, reshipped to points in eastern trunk line territory. Grain, 42.
Peoria, Ill., from New Orleans, La. Palm-kernal meal and copra meal, 154.
Perth Amboy, N. J., to Philadelphia, Pa. Sulphuric acid, 151.
Peshastin, Wash., to Portland, Oreg. Cull apples, 260.

Petersburg, Va., to c. f. a. territory and points east of Buffalo-Pittsburgh line. Lumber, 637.
Philadelphia, Pa. Demurrage on lumber, 225.
Philadelphia, Pa., to Denver, Colo. Congoleum, 163.
Philadelphia, Pa., from Perth Amboy, N. J. Sulphuric acid, 151.
Philadelphia, Pa., to Springfield, Mo., via Memphis, Tenn. Cotton piece goods, 400.
Philipsburg, Pa., from Theba, Ala., originally consigned to Chattanooga, Tenn., and held in transit at Philadelphia, Pa. Lumber, 225.
Pikeview, Colo., to Kansas, Nebraska, Colorado, and Oklahoma. Lignite coal, 249.
Pine City, Minn., to Montana. Hay, 421.
Pinners Point, Va. Absorption of switching charges on lumber and forest products, 377.
Pinners Point, Va., from Bolton, N. C. Lumber, 595.
Pittsburg district, Kans., to Dewey, Okla. Coal, 1.
Pittsburgh, Pa., to official classification territory. Cut glassware, 423.
Pittsburgh, Pa., from Virginia cities. Lumber, 637.
Pittsburgh district, Pa. Divisions; absorption of switching charges. 353.
Plasterco, Tex., from Acme, Tex., via Altus, Okla. Cement plaster, 179.
Plymouth, Mass., to San Francisco and Los Angeles, Calif., and Portland, Oreg. Smoothed zinc plate, 265.
Pocatello, Idaho, from Hereford and Abernathy, Tex. Cattle, 597.
Port Norfolk, Va. Absorption of switching charges on lumber and forest products, 377.
Port Richmond, Pa., to Carney's Point, N. J. Nitrate of soda, 347.
Portland, Ark., to Kansas City, Mo. Scrap iron, 339.
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ABANDONED COMPLAINT. *See* LIMITATION OF ACTION.

ABANDONED PROPERTY.

Subsequent to filing of complaint, line via which rates attacked applied, was sold and abandoned, and the joint interstate class rates, not applicable via any other route, were canceled. *Held:* Rate situation attacked no longer exists and the Commission can make no order for the future. Fitz *v.* N.-C.-O. Ry., 398.

ABSORPTION. *See also* SWITCHING.

Upon further hearing increased rates on shipments between points on the Lake Terminal and interstate points, resulting from nonabsorption of charges of the Lake Terminal, found unreasonable and unduly prejudicial to extent they exceeded rates to and from points in the Cleveland-Lorain district. Reparation awarded. National Tube Co. *v.* L. T. R. R. Co., 469 (481–482).

Absorption of 10 cents per ton, net or gross as rated, not to exceed the published charges of the Lake Terminal and provided by appropriate tariffs, or a division out of the Cleveland-Lorain district rates in that amount, accruing to the Lake Terminal, would not be unreasonable or result in a rebate or ulawful discrimination in favor of affiliated industries. Id. (484.)

Practice of the D., L. & W. and L. V. and of the B., R. & P., of refusing to absorb switching charges of the Erie at Buffalo, N. Y., on transit grain and grain products, to the same extent that they absorb those of the N. Y. C. and Buffalo Creek railroads, found unduly prejudicial. Reparation denied. Globe Elevator Co. *v.* Director General, 587.

Complainant not shown damaged by undue prejudice due to refusal of certain lines to absorb switching charges of the Erie on transit grain to points in Buffalo, N. Y., but reparation awarded on shipments to points which could not have been reached by routes via which switching charges could have been avoided, without disregarding routing instructions. Id. (594).

So far as the shipping public is concerned the effect of a switching absorption is to establish a joint rate. Butterfield Co. *v.* N. O. & N. E. R. R. Co., 741 (743).

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Contention that words in tariff did not limit the exportation from the port of Baltimore, and that export storage charges named therein applied when shipment was actually exported from any other port. *Held:* Tariff applied only on shipments actually exported from Baltimore. United Shoe Machinery Corp. *v.* Director General, 253 (255, 256).

ADDITIONAL SERVICE.

Rates from Memphis, Tenn., may appropriately be somewhat higher than the Arkansas intrastate rates because of, involved in crossing the Mississippi River. Memphis-Southwestern Investigation, 515 (540).

ADJUSTMENT OF RATES. *See also* DISTURBANCE OF ADJUSTMENT.

On grain from points in Illinois via Peoria, Ill., to points in eastern trunk line territory not found unduly prejudicial to Peoria in favor of competing markets. Peoria Board of Trade *v.* A., T. & S. F. Ry. Co., 42 (50).

Minor disadvantages to one point or another incident to group adjustments have under the circumstances of some cases been held not to constitute the undue prejudice made unlawful by section 3 of the act. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (144).

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Conference Ruling 214 (c), cited. Du Pont De Nemours & Co. *v.* C. R. R. Co. of N. J., 243 (244).

Conference Ruling 225, cited. Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (677).

Conference Ruling 286 (f), cited. Inman, Akers & Inman *v.* Director General, 146 (148).

Conference Ruling 473, cited. United Shoe Machinery Corp. *v.* Director General, 253 (256)

Conference Ruling 474 (c), cited. Inman, Akers & Inman *v.* Director General, 146 (148).

Rule 3 of Rules of Practice, cited. Cape Girardeau Portland Cement Co. *v.* St. L. & S. F. R. R. Co., 315 (316).

Rule 5 (b) of Tariff Circular 18–A, cited. Illinois Glass Co. *v.* St. L.-S. F. Ry. Co., 8 (9); Gross *v.* Director General, 37; Zelnicker Supply Co. *v.* Director General, 137 (138); Roxana Petroleum Co. of Okla. *v.* Director General, 607 (608).

Rule 5 (d) of Tariff Circular 19–A, cited. Haley & Lang Co. *v.* American Exp. Co., 747.

Rule 77 of Tariff Circular 18–A, cited. Acme Cement Plaster Co. *v.* Director General, 179 (180); Du Pont De Nemours & Co. *v.* Director General, 247 (248); Virginia-Carolina Chemical Co. *v.* Director General, 583 (584); Roxana Petroleum Co. of Okla. *v.* Director General, 607 (608).

ADVANCE IN RATES. *See also* DOUBLE INCREASE.

Iron and steel, scrap: Increased interstate rates on, from St. Joseph, Mo., to Kansas City, Mo., found not justified and reasonable rates prescribed. Kansas City Bolt & Nut Co. *v.* A., T. & S. F. Ry. Co., 441 (448).

Lumber: Increased rates on, from the Virginia cities to points in c. f. a. territory found justified as to commodity rates but not as to sixth-class rates, for application in carloads. Reparation denied. Garrett Lumber Co. *v.* C. & O. Ry. Co., 637.

Molasses, blackstrap: Present increased rates on, in tank-car loads, from certain Louisiana points to Orange and Beaumont, Tex., found unreasonable to extent they exceed the rates from Shreveport, La., to points in Texas for like distances. Relationship of rates prescribed and reparation awarded. Orange Rice Mill Co. *v.* T. & N. O. R. R. Co., 661.

Wheat: Increased rates resulting from tariff rule in connection with rate on wheat, which provided that when car of less than 80,000 pounds is furnished for carrier's convenience, the marked capacity of car used, but not less than 60,000 pounds, would govern, found not justified. Reasonable rule prescribed and reparation awarded. Northern Grain & Warehouse Co. *v.* O. T. Ry. Co., 101; Northern Grain & Warehouse Co. *v.* Director General, 488.

ADVANCE IN RATES—Continued.

Class and commodity: Rates to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., from various points, increased since 1910, found justified. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (656).

Class rates: Proposed increased class rates from St. Louis, Mo., to points in Oklahoma, denied, as no corresponding increases were proposed to competing points in Texas and Kansas. Memphis-Southwestern Investigation, 515 (561–562, 576).

Switching: Upon further hearing increased rates, due to nonabsorption of charges of the Lake Terminal, on shipments between points on the Lake Terminal and interstate points, resulting in charges in excess of those in effect to and from trunk line points in the Cleveland-Lorain district, found not justified. National Tube Co. *v.* L. T. R. R. Co., 469 (481).

Terminal charges: Authority to establish at Chicago, Ill., a terminal charge of 2 cents per 100 pounds to apply on interstate l. c. l. traffic between points beyond Chicago and industries and universal freight stations located on the C. W. & T. Co., granted. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).

ADVANTAGES AND DISADVANTAGES. *See* LOCATION.

AFFIDAVIT.

Introduced by complainant that agent was instructed but refused to route shipment via lower rated route. Affidavit also introduced by carrier's agent that consignor instructed shipment be given to carrier furnishing cars first, and so routed the shipments. *Held:* Misrouting not established. Zelnicker Supply Co. *v.* M. P. R. R. Corp., 715.

AGENT.

Following *Wall Rope Works*, 49 I. C. C., 199, agent's act of refusing to accept certain c. l. shipments of rope and compelling shipper to forward as l. c. l. traffic, found to have been unauthorized, as embargo against carload traffic had been removed. Reparation awarded. Wall Rope Works (Inc.) *v.* P. R. R. Co., 337.

Demurrage charges found illegal, due to action of agent in disregarding shipper's request to make out new bill of lading on proper form and in failing to make proper correction on original bill of lading in lieu thereof. Reparation awarded. Southern Lumber Co. *v.* Director General, 343.

Rates on Portland cement from Chapman, Pa., to Lugoff, S. C., found unreasonable, due to failure of carrier's agent to publish the same rates as were in effect to Camden, S. C., an intermediate point. Reparation awarded. Lehigh Portland Cement Co. *v.* Director General, 615.

AGGREGATE OF INTERMEDIATES. *See* THROUGH AND LOCAL.

AGREED VALUE. *See* VALUE.

AGREEMENT. *See also* AVERAGE AGREEMENT.

By the Lake Terminal and trunk lines that if reparation should be awarded on basis of the Cleveland-Lorain district rates that the Lake Terminal would participate in the payment of damages to extent its charges covered by the claims exceeded 8 cents per ton, net or gross as rated, but not to exceed its published charges, *Held:* This absorption would not have resulted in any rebate or unlawful discrimination in favor of affiliated industries. National Tube Co. *v.* L. T. R. R. Co., 469 (482).

AGREEMENT—Continued.

Claim of the Lake Terminal for reparation from the trunk line carriers to extent of the difference between the divisions or absorptions paid to it since March 15, 1917, and the amounts herein found reasonable, *Held*: As tariff charge of 8 cents published by the Lake Terminal was absorbed under a stipulation between the Lake Terminal and the trunk lines, reparation denied. Id. (484).

ALLOWANCES.

To depart from previous usage and permit no allowance for a Mississippi bridge or river crossing where the instrumentalities involve special investment or service, would be out of line with the Commission's action upon numerous rate schedules heretofore approved, and out of keeping with similar rate adjustments instituted by the carriers. Memphis-Southwestern Investigation, 515 (540).

AMBIGUOUS TARIFF. *See* TARIFF.

ANALOGOUS ARTICLES. *See* COMPARATIVE RATES; LIKE KINDS OF TRAFFIC.

ARBITRARIES. *See also* DIFFERENTIALS.

Class rates from Sheboygan, Wis., to points in Illinois south of the T., P. & W. Ry., also to St. Louis, Hannibal, and Louisiana, Mo., and Keokuk, Iowa, found unduly prejudicial to Sheboygan, to extent they exceeded rates from Milwaukee by more than the arbitraries stated in the report. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (145).

The uniform scale of class rates approved herein should apply without the addition of arbitraries to traffic moving over a single line or over two or more lines that are under the same management and control, and arbitraries herein approved are not to be increased 25 per cent. Memphis-Southwestern Investigation, 515 (539).

AVERAGE AGREEMENT.

Because of inability of complainant to unload salvaged barley, due to frozen condition of shipments, and because cars were bunched, demurrage charges accruing under the average agreement, not shown unreasonable or unlawful following *Davis Sewing Machine Co.*, 51 I. C. C., 191. Delp Grain Co. *v.* Director General, 175.

BACK HAUL.

Upon rehearing, findings in original reports, 42 I. C. C., 435, and 51 I. C. C., 28, in which ferry-car charges not shown unreasonable on shipments forwarded to defendant's transfer stations for shipment interstate, necessitating a back haul through loading points, adhered to. United Shoe Machinery Co. *v.* B. & M. R. R., 206.

BASING POINT SYSTEM.

In using the combination in constructing through rates to points beyond Nashville, Tenn., the defendants are applying the basing-point system, which has been repeatedly condemned by the Commission. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (655).

BELT LINE.

Collection of switching charges of the Norfolk & Portsmouth belt line on noncompetitive traffic while absorbing such charges on shipments originating at competitive points, not found unreasonable under section 1 of the act to regulate commerce but unreasonable under section 10 of the federal control act. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (391).

BILL OF LADING. *See also* UNIFORM BILL OF LADING.

Demurrage charges found illegal, due to action of agent in disregarding shipper's request to make out new bill of lading on proper form, and in failing to make proper correction on original bill of lading in lieu thereof. Reparation awarded. Southern Lumber Co. *v.* Director General, 343.

Provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay, found not to prohibit payment of meritorious claims seasonably filed with the carrier, after the two-year-and-one-day period has elapsed; but in that they do not accord the shipper the right to a reasonable period after declination of a claim, within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, discriminatory, and unduly prejudicial. Reasonable provision prescribed. Decker & Sons *v.* Director General, 453.

Following *Bills of Lading*, 52 I. C. C., 671, the Commission entertains no doubt of its jurisdiction to construe and pass upon the reasonableness of provisions in, with respect to loss and damage claims. Id. (455).

While limitations in, must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment do not evidence any intent on the part of Congress to erect a statute of limitations barring the payment of seasonably filed claims after any given period. Id. (458).

BLANKET RATES. *See* GROUP RATES; GROUPING.

BOAT LINES.

At the present time there is not a boat operating between St. Louis, Mo., and New Orleans, La., except the fleet of the United States Railroad Administration, which consists of five towboats and a number of barges. Memphis-Southwestern Investigation, 515 (564).

In operation upon the Mississippi River. Id. (565).

BOTH DIRECTIONS.

Contention that rates and minima on cooperage stock from certain eastern defined territory to California terminals and other western points is unreasonable and unduly prejudicial, due to maintenance of lower rates and minima in the reverse direction, not sustained. Associated Cooperage Industries *v.* Director General, 327 (330).

Class E rates on hay from Minnesota and Wisconsin points to stations in Montana, not shown unreasonable as compared with lower rates in the opposite direction, established because of emergency in shortage of feed. MacIntyre *v.* C., St. P., M. & O. Ry. Co., 421.

BRANCH LINE POINTS.

On lignite coal from Pikeview, Colo., a branch line point, to interstate points on the C., R. I. & P. Ry., combination rates on Roswell, Colo., not shown unreasonable but found unduly prejudicial to extent they exceed by more than 10 cents the rates from the Keystone mine, a branch line point near Roswell. Pikes Peak Consolidated Fuel Co. *v.* Director General, 249.

BRIDGE TOLLS.

Rates from Memphis, Tenn., may appropriately be somewhat higher than the Arkansas intrastate rates because of the additional service involved in crossing the Mississippi River. Memphis-Southwestern Investigation, 515 (540).

To depart from previous usage and permit no allowance for a Mississippi bridge or river crossing where the instrumentalities involve special investment or service, would be out of line with the Commission's action

BRIDGE TOLLS—Continued.
upon numerous rate schedules heretofore approved, and out of keeping with similar rate adjustments instituted by the carriers. Id. (540).
Reasonable maximum, for the Mississippi River crossing at Memphis, Tenn., prescribed. Id. (541, 573).
Existing class rates between Memphis, Tenn., and points on class A railroads in Arkansas are unreasonable and unduly prejudicial to Memphis, to extent they exceed by more than reasonable bridge tolls prescribed herein, the corresponding class rates applicable for like distances to intrastate traffic in Arkansas. Id. (541, 573–574).
Existing class rates from Memphis, Tenn., to points in southern Missouri found unreasonable and unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding class rates in effect from St. Louis, Mo., to same points for like distances. Id. (544, 574).
Class rates from Memphis, Tenn., to points in Arkansas found unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding class rates for like distances from St. Louis, Mo., to same destinations. Id. (546, 574).
Charges for a bridge service may be determined upon a basis different from that employed in the construction of charges at a crossing where the transfer is effected by barges or other floating equipment. Id. (552).
BULKY ARTICLES. *See* TWO CARS.
BUNCHING.
Demurrage charges on salvaged barley, accruing because of inability to unload, due to frozen condition of shipments, and because cars were bunched, not shown unreasonable or unlawful following *Davis Sewing Machine Co.*, 51 I. C. C., 191. Delp Grain Co. *v.* Director General, 175.
CANCELLATION.
Commodity rate, specified in bill of lading, canceled via route of movement but was applicable via other competing routes. Higher rate legally applicable assessed. Contention that complainant should have been notified of cancellation, *Held:* Receiving carrier not obligated to turn traffic over to its competitor. Inman, Akers & Inman *v.* Director General, 146.
Subsequent to filing of complaint, line via which rates attacked applied, was sold and abandoned, and the joint interstate class rates, not applicable via any other route, were canceled. *Held:* Rate situation attacked no longer exists and the Commission can make no order for the future. Fitz *v.* N.-C.-O. Ry., 398.
CAR DISTRIBUTION.
Allegation that complainant's stripping coal mine was subjected to undue prejudice in favor of neighboring shaft mines, in alloting coal cars during a period of car shortage, *Held:* Not shown possible for complainant to have loaded more cars than furnished, notwithstanding the fact that it received a relatively less percentage of its pro rata than the shaft mines. Northern Coal Co. *v.* M. & O. R. R. Co., 502.
Mine ratings should be based upon the ability to produce coal, and the commercial capacity to dispose of it, and if these elements fluctuate from time to time the ratings should, periodically, be changed. Id. (510).

CAR FURNISHING.

Fifty-foot car ordered and two 36-foot cars furnished, but no "two-for-one" rule applicable. Combination rate assessed found unreasonable to extent it exceeded lower joint rate, minimum 20,000 pounds, applicable to cars of all sizes. Reparation awarded. Tull & Gibbs *v.* N. & W. Ry. Co., 17.

Where there is a uniform minimum for all cars of all lengths, the carrier is not required to furnish a car of any specified length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. Id. (18).

Tariff rule, providing that when a car of less than 80,000 pounds was furnished for carrier's convenience, the marked capacity of the car used, but not less than 60,000 pounds, would govern, found unreasonable. Reasonable rule prescribed and reparation awarded. Northern Grain & Warehouse Co. *v.* O. T. Ry. Co., 101; Northern Grain & Warehouse Co. *v.* Director General, 488.

Tariff should provide that if a double-deck car is ordered and in lieu thereof two single-deck cars are furnished for the convenience of the carrier, they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of six days is allowed the carriers in which to furnish the car ordered. Coulter *v.* C., M. & St. P. Ry. Co., 165.

Practice with respect to furnishing coal cars to complainant, located on a branch line of, and served singly by, the L. & N., not shown unduly preferential of a neighboring competing mine, located on the same branch line, and served under a joint trackage arrangement by both the L. & N. and C., C., C. & St. L. railways. Gallatin Coal & Coke Co. *v.* L. & N. R. R. Co., 491.

CAR-MILE EARNINGS. *See* EARNINGS.

CAR SHORTAGE.

Allegation that complainant's stripping coal mine was subjected to undue prejudice in favor of neighboring shaft mines, in alloting coal cars during a period of car shortage, *Held:* Not shown possible for complainant to have loaded more cars than furnished, notwithstanding the fact that it received a relatively less percentage of its pro rata than the shaft mines. Northern Coal Co. *v.* M. & O. R. R. Co., 502.

CARLOAD AND LESS THAN CARLOAD. *See also* LESS-THAN-CARLOAD.

Less-than-carload movement of flour is very important and strongly competitive with the carload movement. Rope Paper Sack Bureau *v.* Director General, 209 (213).

On machinery and parts, l. c. l., shipment loaded by initial carrier but unloaded by consignee. *Held:* Absence of a rule providing for application of the c. l. rate, plus a charge for loading, under which lower charges would result, not shown to have resulted in unreasonable charges, and l. c. l. rate legally applicable not shown unreasonable or unduly prejudicial. Shipment found overcharged and reparation awarded. Roberts & Schaefer Co. *v.* Director General, 277.

CARLOAD MINIMUM. *See* MINIMUM WEIGHT.

CHARACTERISTICS OF COMMODITY.

The application of a small quantity of salt to fresh meat does not change its character as such, and where there is no specific rate on fresh-salted meat the rate legally applicable is the rate on fresh meat. Decker & Sons *v.* Director General, 433 (439).

CHECK.
Mere fact that check was mailed, but not received, did not satisfy the tariff obligation to prepay charges. Ruddock Orleans Cypress Co. *v.* Director General, 236 (238).
CHICAGO & CALUMET RIVER RAILROAD COMPANY.
Found to be a common carrier which may lawfully participate in joint rates, or have its charges on interstate shipments absorbed under proper tariff provisions by the roads having the line haul. Statement of basis for its compensation to be agreed upon and must be filed with the Commission immediately upon its adoption. Chicago & Calumet River R. R. Co., 194.
Described. Id. (195).
Analysis of switching traffic and revenue of, for year ended December 31, 1918. Id. (196).
CHICAGO-ST. LOUIS LINE.
Suggestions to cure the conflict of rates resulting from establishment of. Illinois Classification, 290 (303).
CHICAGO SWITCHING DISTRICT.
Rates on sand and gravel from Kickapoo, Ind., to points in, found unreasonable and unduly prejudicial to extent they exceed, for local delivery, the rates from Ginger Hill, Ill., and by more than 5 cents the rates from Algonquin, Ill., and other inner-zone points; and for joint and belt line deliveries, rates which shall not exceed 70 cents per ton. Reparation awarded. Kickapoo Sand & Gravel Co. *v.* Director General, 657.
CHICAGO TUNNEL COMPANY.
Table of traffic statistics. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (372).
CHICAGO WAREHOUSE & TERMINAL COMPANY.
Table of traffic statistics. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).
CIRCUITOUS ROUTES. *See also* DIRECT LINE.
Application for relief from provisions of long-and-short-haul rule granted, with qualifications, as to intermediate destinations reached by indirect lines. Garrett Lumber Co. *v.* C. & O. Ry. Co., 637 (643).
CIRCUMSTANCES AND CONDITIONS. *See also* TRANSPORTATION CONDITIONS.
The principle that the rate per 100 pounds should be lower on the commodity which loads more heavily than on another like commodity loading more lightly but otherwise transported under substantially similar circumstances and conditions, is sound. Decker & Sons *v.* Director General, 433 (438).
Canned milk and other canned goods are shipped under the same general conditions of transportation and their weights and values are not greatly different. Carnation Milk Products Co. *v.* Director General, 665 (667).
Differences in density of population, volume of traffic, and other conditions affecting railroads operating in southern territory and in c. f. a. and trunk line territories are sufficient to warrant higher rates south of the Ohio River than north thereof. Commercial Club of Carrollton, Ky., *v.* Director General, 697 (700).
CLAIMS. *See* LIMITATION OF ACTION; LOSS AND DAMAGE.

CLASS AND COMMODITY RATES. *See also* CLASS RATES.

Class E rate, legally applicable, on crude clay exceeded lower commodity rate subsequently established. Reparation awarded. Refinite Co. *v.* Director General, 31.

Second-class rate on clarified sugar in Cuban bags exceeded lower commodity rate when in cotton bags. Reparation awarded. Brock Candy Co. *v.* A. G. S. R. R. Co., 107.

Fourth-class rate on angle and splice bars and track bolts, l. c. l., from East St. Louis, Ill., to Boonville, Ind., not found unreasonable, but sixth-class rate on old rails, c. l., from and to the same points found unreasonable to extent it exceeded lower commodity rate in effect to Louisville, Ky. Reparation awarded. Zelnicker Supply Co. *v.* Director General, 135.

Joint first-class rate on cotton in compressed bales from Mobile, Ala., to Savannah, Ga., for export, found unreasonable to extent it exceeded increased commodity rate permitted in *New Orleans Cotton Exchange*, 46 I. C. C., 712. Reparation awarded. Inman, Akers & Inman *v.* Director General, 146 (147).

Fifth-class rate on sulphuric acid, in tank-car loads, found unreasonable to extent it exceeded lower commodity rate applicable via routes other than route of movement. Reparation awarded. Du Pont de Nemours & Co. *v.* Director General, 151.

Sixth-class rate on chip board exceeded lower commodity rate on box board, strawboard, and wood-pulp board. Reparation awarded. United Paperboard Co. *v.* Director General, 218.

No justification for applying class rate on cull apples, in bulk, while a lower commodity rate applied on graded apples, in boxes. Wittenburg-King Co. *v.* Director General, 260 (261).

Fifth-class rate on rock board exceeded lower commodity rate subsequently established. Reparation awarded. Rockford Paper Box Board Co. *v.* C., M. & St. P. Ry. Co., 262.

Proposed cancellation of commodity rates on agricultural implements, other than hand, and applying official classification class rates, not recommended. Illinois Classification, 290 (305).

Sixth-class rate on stable manure from Camp Sherman, Ohio, to Parma, Ohio, exceeded lower commodity rate subsequently established. Reparation awarded. Swift & Co. *v.* Director General, 324 (325).

Class D rate on scrap iron from points in southeastern Arkansas to Kansas City, Mo., exceeded lower commodity rate from Tallulah, La., a farther distant point. Reparation awarded. Sonken-Galamba Iron & Metal Co. *v.* Director General, 339.

Fourth-class rate on metal barrel churns not found unreasonable as compared with lower commodity rate subsequently established. Sturges & Burn Mfg. Co. *v.* Director General, 345.

Commodity rate on high explosives from Fayville, Ill., to Flat River, Mo., via the longer route through Salem, Ill., not found unreasonable, but via the shorter route through Ste. Genevieve, Mo., found unreasonable to extent it exceeded the joint first-class rate. Reparation awarded. Aetna Explosives Co. *v.* Director General, 350 (352).

Class E rates on hay from Minnesota and Wisconsin points to stations in Montana, not shown unreasonable as compared with lower commodity rates in the opposite direction, established because of emergency in shortage of feed. MacIntyre *v.* C., St. P., M. & O. Ry. Co. 421.

CLASS AND COMMODITY RATES—Continued.

Second-class express rates on cream, in cans, exceeded lower commodity rates subsequently established. Reparation awarded. Rio Grande Valley Creamery Co. *v.* Wells Fargo & Co., 425.

Class D rates on scrap iron or steel from Kansas and Nebraska points to Kansas City, Mo., not shown unreasonable, but commodity rates found unduly prejudicial to Kansas City to extent they are less than 7 cents lower than to Colorado common points. Kansas City Bolt & Nut Co. *v.* A., T. & S. F. Ry. Co., 441.

Joint class rate on fuel wood from Hermansville, Mich., to Mitchell, S. Dak., exceeded lower combination commodity rate. Reparation awarded and measure of reasonable rate prescribed. Anderson Lumber Co. *v.* Director General, 467.

Sixth-class rate on niter cake from Carney's Point, N. J., to Norfolk, Va., found unreasonable as compared with lower commodity rates on niter cake and other low grade commodities between other points. Reparation awarded. Du Pont De Nemours & Co. *v.* Director General, 499.

The southwestern carriers have published relatively high class rates for the carload classes and have made commodity rates to move the traffic, hence little traffic moves in that section on carload class rates. Memphis-Southwestern Investigation, 515 (537).

In western trunk line territory, with relatively low carload class rates, commodity rates are less frequently employed, and there is a heavy movement of traffic on the carload class rates. Id. (537).

From defined territories in the southeast to points in Arkansas found unduly prejudicial to points in Arkansas of points in Oklahoma to extent that rates to Arkansas points exceed the corresponding rates from the defined territories to points in Oklahoma. Id. (557, 576).

From New Orleans, La., to interior points in Oklahoma and eastern Kansas, under present conditions, found unduly prejudicial to those points of Kansas City, Mo., to extent they are in excess of the percentages of the corresponding rates from New Orleans to Kansas City, prescribed herein. Id. (571, 577).

Sixth-class intrastate rate on sand and gravel exceeded lower commodity rate subsequently established. Reparation awarded. New York Commission of Highways *v.* Director General, 619 (621–623).

Increased rates on lumber from the Virginia cities to points in c. f. a. territory found justified as to commodity rates but not as to c. l. sixth-class rates. Reparation denied. Garrett Lumber Co. *v.* C. & O. Ry. Co., 637.

Joint sixth-class rate on mill cinder found unreasonable to extent it exceeded commodity rate via routes other than route of movement. Reasonable relationship of rates prescribed and reparation awarded. Interstate Iron & Steel Co. *v.* Director General, 669.

Class C rate legally applicable on scrap iron from Texarkana, Ark.-Tex., to Chicago, Ill., exceeded lower commodity rate in effect from Texas common points. Reparation awarded. Karchmer Iron & Metal Co. *v.* Director General, 730.

CLASS RATES. *See also* CLASS AND COMMODITY RATES; DISQUE SCALE; DISTANCE SCALE; SHREVEPORT SCALE.

Sixth-class rates on glass sand from Silica, Ohio, to Fairmont, W. Va., which exceeded rates to Pittsburgh, plus the sixth-class arbitrary, found unreasonable to extent they exceeded rates herein found reasonable.

CLASS RATES—Continued.

Reparation awarded. Owens Bottle-Machine Co. *v.* B. & O. R. R. Co., 122 (129, 130).

Third-class rate legally applicable on ivory-nut shavings from Rochester, N. Y., to North Birmingham, Ala., found unreasonable to extent it exceeded sixth-class rate subsequently established. Reparation awarded. Aetna Explosives Co. *v.* N. Y. C. R. R. Co., 170 (171).

Joint class B rate on terra cotta from St. Louis, Mo., to New Madrid, Mo., via an interstate route, exceeded lower class D rate subsequently established. Reparation awarded. Winkle Terra Cotta Co. *v.* Director General, 172.

Combination class rates on high explosives, c. l. and l. c. l., from Emporium, Pa., to Ironton, Ohio, found unreasonable to extent they exceeded first-class, c. l., and double first-class, l. c. l., prescribed in *Aetna Explosives Co.*, 52 I. C. C., 26. Reparation awarded. Aetna Explosives Co. (Inc.) *v.* Director General, 177.

Class A rate on lumber from New Orleans, La., to Violet, La., exceeded rate subsequently established by the Director General. Reparation awarded. Ruddock Orleans Cypress Co. *v.* Director General, 236.

History and summary of changes in Illinois class rates. Illinois Classification, 290 (298–300).

Recommended that scale of class rates under Illinois classification be canceled and that the Disque scale, governed by official classification, and class rates governed by western classification, be substituted therefor, between points herein set forth. Id. (302).

Combination class rate on high explosives from South Windsor, Conn., to Emporium, Pa., exceeded joint first-class rate in effect. Reasonable maximum rate prescribed and reparation awarded. Aetna Explosives Co. *v.* Director General, 333.

A maximum distance scale of, for interstate application prescribed for distances not in excess of 350 miles between points in Arkansas, Oklahoma, and southern Missouri. Memphis-Southwestern Investigation, 515 (532, 573, 579).

From Natchez, Miss., to points in Arkansas, found unduly prejudicial to Natchez of Little Rock, Ark., and Memphis, Tenn., to extent they exceed by more than the differences in the crossing charges at Memphis and Natchez, prescribed herein, the corresponding rates from Memphis and Little Rock to same destinations, for like distances. Id. (533, 575).

There is a marked difference between the southwestern territory and western trunk line territory with respect to the movement of commodities on carload class rates. Id. (537).

Between Memphis, Tenn., and all points on class "A" railroads in Arkansas are unreasonable and unduly prejudicial to Memphis, to extent they exceed by more than reasonable bridge tolls prescribed herein, the corresponding class rates applicable for like distances to intrastate traffic in Arkansas. Id. (541, 573–574).

From Memphis, Tenn., to points in southern Missouri found unreasonable and unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls prescribed herein, the corresponding class rates from St. Louis, Mo., to same points for like distances. Id. (544, 574).

From Memphis, Tenn., to points in Arkansas found unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding rates for like distances from St. Louis, Mo., to same destinations. Id. (546, 574).

CLASS RATES—Continued.

From Monroe and Shreveport, La., to points on class "A" railroads in southern Arkansas found unreasonable and unduly prejudicial to Monroe and Shreveport, of competing points in Arkansas, to extent they exceed for like distances the corresponding class rates, herein prescribed, applicable to intrastate traffic in Arkansas. Id. (555, 575–576).

From points in western trunk line territory not shown to be unduly prejudicial to Fort Smith, Ark., or unduly preferential of Muskogee, or other points in eastern Oklahoma. Id. (556, 576).

Reasonable maximum class rates approved between Memphis, Tenn., and Kansas City, Mo. Id. (560, 576).

Proposed increased class rates from St. Louis, Mo., to points in Oklahoma, denied, as no corresponding increases were proposed to competing points in Texas and Kansas. Id. (561–562, 576).

From New Orleans, La., to Arkansas City and Caldwell, Kans., should not exceed the class rates to Kansas City, Mo.; and to points north and east of Arkansas City and Caldwell, the class rates should not exceed those to Arkansas City and Caldwell by differentials in excess of those herein prescribed. Id. (570, 576).

Reasonable class rates prescribed from New Orleans, La., to points in Arkansas, Oklahoma, and Missouri River cities. Id. (570, 576).

If the rates from New Orleans, La., to Kansas City, Mo., are to be on the basis herein prescribed, the rates to typical Oklahoma points should not exceed the rates herein prescribed. Id. (570, 576–577).

Reasonable rates prescribed for application between New Orleans, La., and the Little Rock group. Id. (573).

Issue too limited to permit entry of order prescribing specific class rates on printing, book, and wrapping paper, for application from and to points in eastern trunk line territory and between points in this territory and New England. Consideration of such rates should await submission by carriers of revised scale of class rates for use from and to these points or filing of appropriate complaints. Michigan Paper Mills Traffic Asso. *v.* N. Y. C. R. R. Co., 679 (682).

Between points in trunk line territory and Carrollton, Ky., based upon the Cincinnati combinations, not shown unduly prejudicial to Carrollton or Madison, Ohio, and other Ohio River cities, to which points rates are made with relation to the New York-Chicago rates. Commercial Club of Carrollton, Ky., *v.* Director General, 697.

Between points in c. f. a. and trunk line territories are made upon established percentages of the New York-Chicago rates, and all points in c. f. a. territory, regardless of their proximity to the Ohio River, are accorded the percentage basis, while between points in c. f. a. or trunk line territories and points in southern territory they are usually made by combination on one of the Ohio River crossings. Id. (699).

CLASSIFICATION. *See also* ILLINOIS CLASSIFICATION.

In General:

In framing a classification no one consideration is controlling. Volume of tonnage, risk, liability to damage, cost of carriage, care in handling, controlling conditions caused by competition, and other transportation characteristics must be considered. McCrory Stores Corp *v.* Director General, 423 (424).

If based on value the number of classes would be too large and the refinement too subtle for practical operation. Id. (424).

CLASSIFICATION—Continued.
In General—Continued.
A rating that has been long continued should not be disturbed unless it is found to cause the exaction of an unreasonable or an unjustly discriminatory or unduly prejudicial charge. Id. (424).
Acids: Proposed changes in rates on, in Illinois classification, to c. f. a. basis of 90 per cent of fifth-class, *Held:* Change not recommended, and consumer in Indiana should be placed upon a nondiscriminatory basis. Illinois Classification, 290 (305).
Agricultural implements: Proposed cancellation of commodity rates on, other than hand, and applying official classification class rates, not recommended. Illinois Classification, 290 (305).
Boots and shoes: Proposed cancellation of commodity rates on, l. c. l., and applying in lieu thereof the Disque scale, recommended, but with respect to c. l. rates the Commission can not recommend that increases proposed be made. Illinois Classification, 290 (305–306).
Bottles, glass, and cullets: Proposed cancellation of commodity rates on, in Illinois classification territory, and on glass bottles in Indiana, not recommended. Illinois Classification, 290 (306).
Brick: Recommended that the discrimination against the brick-producing points in Indiana near the Illinois boundary and in favor of Danville, be temporarily adjusted, without increasing all of the Illinois district rates as proposed, pending the determination of the complaint under Docket No. 10733. Illinois Classification, 290 (306).
Building sheet metal work:
Ratings on certain items under heading "Building Sheet Metal Work" in official classification found unreasonable and reasonable ratings prescribed. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402.
Official classification rating of third-cass l. c. l. and fourth-class c. l., on, iron or steel, or wood covered with iron or steel or tin, n. o. i. b. n., bronzed, coppered, enameled, or painted, not found unreasonable. Id. (414).
Canned goods: Proposed cancellation of commodity rates on, and substitution of Disque scale in lieu thereof, not recommended and discrimination against Indiana shippers, shipping into Illinois, should be removed. Illinois Classification, 290 (306–307).
Casings, iron and steel: Present rating in official classification in which no distinction is made between shipments set up or knocked down, found unreasonable to extent they exceed the ratings formerly in effect, in which such distinction was made. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (409).
Ceiling, etc., iron and steel: Present rating in official classification of rule 26, l. c. l., and fifth-class, c. l., on ceiling or siding, or siding moldings, panels, or ornaments, other than enameled, not found unreasonable as compared with ratings of third to fourth class on various metallic articles, and third-class on wooden moldings, l. c. l. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (413).
Copper, brass, or bronze articles: Present ratings in official classification on, not shown unreasonable. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (407).
Cornstarch: Proposed increase in rates on, by adding 15 per cent increase, not recommended. Illinois Classification, 290 (307).

CLASSIFICATION—Continued.
Door and window frames:
Present rating in official classification on copper, brass, or bronze door and window frames, set up, found unreasonable to extent it exceeds rule 26, minimum 24,000 pounds, subject to rule 27. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (407).
Present rating in official classification on, iron and steel, found unreasonable to extent it exceeds fifth class, minimum 24,000 pounds, subject to rule 27, but requirement that l. c. l. shipments be shipped in boxes or crates found reasonable. Id. (410–411).
Doors, iron and steel: Present rating on, other than rolling, whether bronzed, coppered, enameled, painted, or galvanized, in official classification, should not exceed rule 25, l. c. l., and fourth class, c. l. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (410).
Egg cases and fillers: Proposed increase of 15 per cent in commodity rates on, not recommended. Illinois Classification, 290 (307).
Extracts, flavoring: Southern classification rating on, in glass bottles, packed in wooden cases, and in bulk, in wooden barrels, not found unreasonable or unduly prejudicial as compared with ratings in the western and official classifications. Sauer Co. *v.* A. & V. Ry. Co., 11 (14).
Fruit jars: Proposed cancellation of commodity rates on glass bottles, under which fruit jars move, not recommended herein, but discrimination existing between manufacturers located at Hillsboro, Ill., and Muncie, Ind., should be removed. Illinois Classification, 290 (307).
Furniture: Proposed cancellation of commodity rates on, in the Illinois district, and applying class rates under the Disque scale, not recommended, as the cancellation would unduly change the relation of rates between manufacturing points. Illinois Classification, 290 (308).
Glassware: Allegation that rating of one and one-half times first class on common or skin-cut glassware is unreasonable and that a reasonable basis would be rule 25, with a declared valuation clause limiting the application of the rule to glassware of value not exceeding $1 per dozen, not sustained. McCrory Stores Corp. *v.* Director General, 423.
Iron and steel articles: Recommended that rates on manufactured, be revised by reverting to the basis in effect prior to October 26, 1914, and adding percentage increases as agreed by shippers, with such other modifications as circumstances will require. No recommendation with respect to iron and steel. Illinois Classification, 290 (308).
Junk and scrap metal: Proposal to increase rates in effect June 24, 1918, in line with advance in *Fifteen Per Cent Case*, plus 25 per cent under General Order No. 28, not justified. Illinois Classification, 290 (311).
Leatherboard: Official classification ratings on, not shown unreasonable, but rating on scrap leather and scrap leatherboard, in straight or mixed carloads, of a declared or agreed value not exceeding 3.5 cents per pound, found unreasonable to extent it exceeds sixth class, minimum 30,000 pounds. Reparation denied. Atlas Leather Mfg. Co. *v.* P., C., C. & St. L. R. R. Co., 394.
Lime: Proposed increased rates on, from Illinois district producing points by adding 15 per cent advance to the advance of 1.5 cents per 100 pounds, made under General Order No. 28, recommended. Illinois Classification, 290 (308–309).

CLASSIFICATION—Continued.

Live stock: Proposal to eliminate commodity rates and substitute generally the Disque scale, plus percentage increases, except on horses and mules, which are proposed to be advanced to second class, under exceptions to the official classification, not recommended. Illinois Classification, 290 (309).

Lumber: Proposal to cancel Illinois maximum scale and to apply sixth-class official classification subject to specific commodity rates from the gateways, and where specific commodity rates are published, to advance the rates in effect June 24, 1918, one cent per 100 pounds under decision in the *Fifteen Per Cent Case*, plus maximum advance of 5 cents per 100 pounds under General Order No. 28, not recommended. Illinois Classification, 290 (309).

Machinery: Proposal to cancel commodity rates on, and to apply official classification, fifth class, in lieu thereof, not recommended, as no actual prejudice against Indiana shippers shown. Illinois Classification, 290 (309–310).

Molding, iron and steel: Official classification rating of fourth class, on bronzed, coppered, enameled, or painted moldings, c. l., not found unreasonable, but l. c. l. rating of third class on moldings, galvanized, plain, or primed, found unreasonable to extent it exceeds rule 26. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (412).

Packing house products and fresh meats: Proposal to advance commodity rates on, withdrawn and testimony insufficient to warrant any recommendation. Illinois Classification, 290 (310).

Petroleum and products: Proposal to cancel commodity rates and to apply 90 per cent of fifth class under the Disque scale in effect May 25, 1918, plus 4.5 cents under General Order No. 28, subject to present fifth-class rates as maxima, not recommended as proposed change would disrupt the relative adjustment. Illinois Classification, 290 (310).

Prepared roofing: Proposed cancellation of commodity rates on, between points in the Illinois district, and applying 90 per cent of sixth class, not recommended as proposed basis would work a serious disadvantage to competitive points. Illinois Classification, 290 (310).

Sash, iron and steel: Present rating on, in official classification of first class, l. c. l., and third class, c. l., found unreasonable to extent they exceeded ratings of second class, l. c. l., and fifth class, c. l., formerly in effect. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (412).

Sheet-metal work: Difference in value and cubic weights, and the fact that sheet metal is the groundwork or base of building sheet-metal work, and in that sense is the raw material and the latter the product, *Held:* Sheet-metal work may properly be accorded a higher rating than sheet metal. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (406–407).

Shells, crushed: Proposed cancellation of commodity rates on, and substitution of sixth-class rates under Disque scale in lieu thereof, not recommended as many fourth section departures would result. Illinois Classification, 290 (311).

Shutters, iron and steel: Present minimum weight of 36,000 pounds, in official classification found unreasonable to extent it exceeds minimum weight of 30,000 pounds formerly in effect. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (413).

CLASSIFICATION—Continued.

Stoves: Record insufficient to warrant cancellation of commodity rates on, between points in Illinois district and to substitute therefor fifth-class rates subject to official classification. Illinois Classification, 290 (311).

Window frames and sash combined, iron and steel: Rating on, in official classification, l. c. l., in boxes or crates, should not exceed second class, and in packages, c. l., fifth class, minimum 24,000 pounds, subject to rule 27. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (410–411).

CLASSIFICATION TERRITORIES.

Rating on flavoring extracts in glass bottles packed in wooden cases, and in bulk in wooden barrels, in southern classification, not found unreasonable or unduly prejudicial as compared with ratings in western and official classifications. Sauer Co. *v.* A. & V. Ry. Co., 11 (14).

Illinois classification compared with official, southern, and western. Illinois Classification, 290 (297).

Comparison of c. l. and l. c. l. ratings in official and Illinois classifications. Appendix No. 1. Id. (297, 313).

Comparison of Illinois and c. f. a. scales, classes 1 to 4. Appendix No. 2. Id. (300, 314).

There is a marked difference between southwestern and western trunk line territories with respect to the movement of commodities on carload class rates. Memphis-Southwestern Investigation, 515 (537).

Class rates between points in c. f. a. and trunk line territories are made upon established percentages of the New York-Chicago rates, and all points in c. f. a. territory, regardless of their proximity to the Ohio River are accorded the percentage basis, while between points in c. f. a. or trunk line territories and points in southern territory they are usually made by combination on one of the Ohio River crossings. Commercial Club of Carrollton, Ky. *v.* Director General, 697 (699).

COAL MINES.

Stripping mine, described. Northern Coal Co. *v.* M. &. O. R. R. Co., 502 (503).

Testified that stripping mines encounter many more delays than shaft mines, by reason of inherent disadvantages in operation. Id. (509).

COLLECTION OF CHARGES.

Not enforceable through this Commission. Held Bros. *v.* E. P. & N. E. R. R. Co., 416 (420).

COMBINATION RATES. *See also* PROPORTIONAL RATES.

On soda ash specifically routed by shipper, no joint through rate in effect. Combination rate assessed not shown unreasonable but shipments misrouted as lower combination rate, consistent with complainant's routing instructions, applied via route other than route of movement. Reparation awarded. Du Pont de Nemours & Co. *v.* C. R. R. of N. J., 243.

Proportional rate on lumber from Bolton, N. C., to Norfolk and Pinners Point, Va., and points north thereof, found unreasonable to extent it exceeded the aggregate of intermediate rates in effect over route of movement via Drum Hill, N. C. Reparation awarded. Waccamaw Lumber Co. *v.* A. C. L. R. R. Co., 595.

COMMODITY RATES. *See* CLASS AND COMMODITY RATES.

COMMON CARRIER.

Chicago & Calumet River R. R. Co., found to be, which may lawfully participate in joint rates, or have its charges on interstate shipments absorbed under proper tariff provisions by the roads having the line haul. Statement of basis for its compensation to be agreed upon and must be filed with the Commission immediately upon adoption. Chicago & Calumet River R. R. Co., 194.

Newburgh & South Shore Ry. Co., and the Union R. R. Co., found to be, subject to the act, which may lawfully receive from their trunk line connections, under appropriate tariffs, reasonable divisions of joint rates or absorptions of switching charges. American Steel & Wire Co. *v.* N. & S. S. Ry. Co., 353.

Lake Terminal R. R. Co., found to be, subject to the provisions of the act. National Tube Co. *v.* L. T. R. R. Co., 469 (476).

COMPARATIVE RATES.

In general: When the rate compared is clearly shown to be less than that which the carrier could reasonably be required to publish, the Commission can not use that subnormal rate as a measure of the reasonableness of the rates on commodities, although they possess similar transportation characteristics. Carnation Milk Products Co. *v.* Director General, 665 (668).

Acid, sulphuric: Rate legally applicable on, in tank-car loads, found unreasonable to extent it exceeded rate on nitrating acid. Reparation awarded. Du Pont De Nemours & Co. *v.* Director General, 612.

Box shooks:

Rates on yellow-pine box shooks found unreasonable to extent they exceeded rates on yellow-pine lumber. Beaven-Jackson Lumber & Veneer Co. *v.* B. & M. R. R., 15.

Unreasonable to charge higher rates on box shooks than on lumber of the kind from which the shooks are manufactured. Id. (16).

Chip board: Sixth-class rate on, found unreasonable to extent it exceeded lower commodity rate on box board, strawboard, and wood-pulp board. Reparation awarded. United Paperboard Co. *v.* Director General, 218.

Churns: Rate on metal barrel churns not found unreasonable as compared with rate on wooden churns. Sturges & Burn Mfg. Co. *v.* Director General, 345.

Congoleum: Rates on, in straight or mixed carloads, found unreasonable to extent they exceeded the rate on linoleum and other floor coverings. Reparation awarded. Volker & Co. *v.* Director General, 163.

Copra and palm-kernel products: Rates on, found unreasonable to extent they exceeded rates on similar products of cotton seed. Reparation awarded. Southport Mill (Ltd.) *v.* Director General, 154.

Eyelets: Rate on, compared with rates on yarn, cotton piece goods, blankets, shoe tacks, and shoe string nails. New Bedford Chamber of Commerce *v.* Director General, 274 (275).

Flavoring extracts: Ratings in southern classification on, not found unreasonable as compared with ratings on candy, grape juice, malted milk, olives, pickles, acids, and other commodities. Sauer Co. *v.* A. & V. Ry. Co., 11 (12).

Glassware: Rating of one and one-half times first class on common or skin-cut, not shown unreasonable as compared with rule 25 rating on glassware, uncut. McCrory Stores Corp. *v.* Director General, 423.

COMPARATIVE RATES—Continued.

Grindstones: Rates on pulp grindstones not found unreasonable as compared with rates on commercial grindstones and building stone. Crown Willamette Paper Co. *v.* Director General, 231.

Meats: Rates on fresh-salted meats not shown unreasonable as compared with rates on packing-house products. Decker & Sons *v.* Director General, 433.

Milk, condensed: Rates on canned condensed milk, boxed, found unreasonable in so far as they exceeded rates on canned vegetables, boxed. Reparation awarded. Oatman Condensed Milk Co. *v.* Director General, 228.

Mops and mop handles: Rates on, found unreasonable as compared with rates on various other commodities. Reasonable rates prescribed and reparation awarded. Portland Traffic & Transportation Asso. *v.* B. & M. R. R., 733 (738).

Niter cake: Sixth-class rate on, found unreasonable as compared with lower commodity rates on niter cake and other low grade commodities between other points. Reasonable rate prescribed and reparation awarded. Du Pont De Nemours & Co. *v.* Director General, 499.

Plates, smoothed zinc: Second-class any-quantity rates on, c. l. and l. c. l., found unreasonable to extent they exceeded by more than 25 cents the c. l. and l. c. l. rates on plate or sheet zinc. Reparation awarded. Mohr & Sons *v.* N. E. S. S. Co., 265.

Poles and piling: Following *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, 625, rates on cedar poles and piling transported on more than one car, found unreasonable in so far as they exceeded rates on fir lumber in single carloads. Reparation awarded. National Pole Co. *v.* A., T. & S. F. Ry. Co., 625.

Polishes: Rates on O'Cedar polish and various wax furniture and floor polishes, in metal cans, in boxes, c. l. and l. c. l., found unreasonable as compared with rates on various other liquids. Reasonable rates prescribed and reparation awarded. Portland Traffic & Transportation Asso. *v.* B. & M. R. R., 733 (737).

Rock board: Fifth-class rate on, found unreasonable as compared with commodity rate on wood-pulp board. Reparation awarded. Rockford Paper Box Board Co. *v.* C., M. & St. P. Ry. Co., 262 (263).

Roofing: Fifth-class rates on hard corrugated asbestos roofing and siding, not found unreasonable as compared with commodity rate on composition roofing. Matthiessen & Hegeler Zinc Co. *v.* Director General, 271.

Terra cotta: Rate on, found unreasonable as compared with rate on dressed and artificial stone. Reparation awarded. Winkle Terra Cotta Co. *v.* Director General, 172.

Wall board: Carload ratings on, found unreasonable and unduly prejudicial to extent they exceeded rates on wood-pulp board. Reparation awarded. Cornell Wood Products Co. *v.* A., T. & S. F. Ry. Co., 257.

COMPETING LINES.

Carriers disadvantageously located are frequently willing to accord liberal divisions in order to be permitted to share in traffic to or from a point reached by a competitor. Western Pacific R. R. Co. *v.* S. P. Co., 71 (81).

Commodity rate, specified in bill of lading, cancelled via route of movement but was applicable via other competing routes. Higher rate legally applicable assessed. Contention that complainant should have been notified of cancellation, *Held:* Receiving carrier not obligated to turn traffic over to its competitor. Inman, Akers & Inman *v.* Director General, 146.

COMPETITION.
Articles:
Carriers in recognition of conditions and of the competitive nature of the commodities, have put copra and palm-kernel products on the same basis as cottonseed products, but this action on their part is not necessarily an admission that the higher rates charged were unreasonable or unduly prejudicial. Southport Mill (Ltd.) *v.* Director General, 154 (161).
Canned goods and canned milk, while by reason of analogy are generally given the same rates, are nevertheless distinct commodities, not competing with each other. Carnation Milk Products Co. *v.* Director General, 665 (668).
Carrier: Competition between the rail carriers serving Nashville, Tenn., found not to be of such a nature as to affect the measure of the rates to that point, as the record in *Financial Relations, etc., L. & N. R. R. Co.*, 33 I. C. C., 168, clearly established that the purpose of control of the N., C. & St. L. through stock ownership by the L. & N., was primarily to .restrict competition and maintain rates. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (652).
Potential: The competition with the boat lines operating on the Cumberland, Ohio, and Mississippi rivers encountered by defendants in transporting freight to Nashville, Tenn., is almost entirely potential and not of such a character as to control or affect materially the rail rates to Nashville. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (655).
COMPETITIVE CONDITIONS.
Rates in effect between July 21, 1915, and July 19, 1916, on canned milk (condensed) from condensing plants in the state of Washington to various interstate points not shown unreasonable or unduly prejudicial as compared with rates on other canned goods taking lower rates because of competitive conditions. Carnation Milk Products Co. *v.* Director General, 665.
It does not follow from the fact that because the rate on a commodity is reduced, due to competitive conditions, that the carrier is compelled simultaneously to place similar commodities, not competitive, upon the same basis, or that a violation of the act necessarily results from the failure so to do. Id. (668).
COMPETITIVE TRAFFIC.
Collection of switching charges of the Norfolk & Portsmouth belt line on noncompetitive traffic while absorbing such charges on shipments originating at competitive points, not found unreasonable under section 1 of the act to regulate commerce but unreasonable under section 10 of the federal control act. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (391).
CONCENTRATION IN TRANSIT. *See* TRANSIT ARRANGEMENTS.
CONFERENCE RULING. *See* ADMINISTRATIVE RULING.
CONFLICTING RATES.
Suggestions to cure the conflict of rates resulting from the establishment of the Chicago-St. Louis line. Illinois Classification, 290 (303).
CONGESTION. *See* BUNCHING.
CONSTRUCTIVE MILEAGE.
Class rates from Natchez, Miss., for distances not in excess of 350 miles, to points in Arkansas, found unreasonable to extent they exceed by more than reasonable charges for the Mississippi River crossing, the class rates prescribed herein, provided the additional charges for the

CONSTRUCTIVE MILEAGE—Continued.
river crossing shall be determined by adding to actual distances not more than 20 constructive miles. Memphis-Southwestern Investigation, 515 (553, 575).
CONTAINERS. *See also* PACKING.
Second-class rate on clarified sugar in Cuban bags, found unreasonable to extent it exceeded lower commodity rate when in cotton bags. Reparation awarded. Brock Candy Co. *v.* A. G. S. R. R. Co., 107.
Cotton bags are no safer as containers for clarified sugar than Cuban bags. Id. (109).
Rules and regulations of the southern classification, prohibiting the transportation of flour and meal, in rope-paper sacks, found unduly prejudicial as compared with various other commodities moving in paper containers. Rope Paper Sack Bureau *v.* Director General, 209 (212–213).
CONTRACT. *See* AGREEMENT.
COST. *See* COURT COSTS.
COST OF SERVICE.
Statistics and figures showing, introduced by complainant to support allegation of unreasonableness. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280 (284).
Inquiry as to the cost of the service received, especially where rates are increased ostensibly to meet those costs, is entitled to serious consideration. Id. (286).
Lake Terminal's estimates for year 1918 representing share of railway operating expenses and taxes attributable to each ton of interchange freight, and the proportionate charge on interchange traffic necessary to yield a return of 6 per cent upon that portion of the value of the property allocated to such traffic. National Tube Co. *v.* L. T. R. R. Co., 469 (482–484).
COURT COSTS.
Neither costs nor interest paid by complainants, incidental to unsuccessful litigation in the courts, of which the unreasonable freight charges were not the proximate cause, can be included in an award of reparation. But allowance of interest was the equivalent of payment of claims in suit when due and payable, or of the judgments when entered, and fixes the date as of which interest on the unreasonable charges is allowable. Portland Cattle Loan Co. *v.* Director General, 597 (600).
COURT PROCEEDINGS.
After court proceedings instituted for collection of certain demurrage charges, complaint filed before the Commission alleging such charges unreasonable. *Held:* Upon a complaint to secure a ruling upon reasonableness of such charges, and to obtain relief from payment of same, legal proceedings therefore having been instituted, the Commission may inquire into the reasonableness and determine that issue, but questions of fact to be determined by the court. Charges not found unreasonable. Heid Bros. *v.* E. P. & N. E. R. R. Co., 416.
CUMMINS AMENDMENT.
While limitations in bills of lading must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment do not evidence any intent on the part of Congress to erect a statute of limitations barring the payment of seasonably filed claims after any given period. Decker & Sons *v.* Director General, 453 (458).

CUMMINS AMENDMENT—Continued.

Rate legally applicable on blackstrap molasses, in tank-car loads, limited to blackstrap the "declared value of which does not exceed 8 cents per gallon," published without the Commission's authority and under the second Cummins amendment, void and unlawful. Orange Rice Mill Co. *v.* T. & N. O. R. R. Co., 661 (663).

DAMAGES. *See also* WAR TAX.

Awarded for discriminations in divisions of passenger fares between points in California and Salt Lake City, Utah, in violation of the second paragraph of secton 3 of the act. Western Pacific R. R. Co. *v.* S. P. Co., 71 (81).

Erroneous information from agent or representative of carrier as to the application of a tariff affords no ground upon which the commission can award reparation. United Shoe Machinery Co. *v.* B. & M. R. R., 206 (208).

Reparation awarded on various shipments of cement from Cape Girardeau, Mo., to points in Illinois, based upon findings in 35 I. C. C., 109. Cape Girardeau Portland Cement Co. *v.* St. L. & S. F. R. R. Co., 315.

Contention that no reparation should be awarded based upon decision in 35 I. C. C., 109, because it was not prayed for in that proceeding as required by the Commission's Rules of Practice, is not well founded. Id. (316).

The voluntary reduction of a rate by carriers is not enough to support an award of reparation on shipments moving prior to the reduction. Sturges & Burn Mfg. Co. *v.* Director General, 345 (346).

Commission can award reparation for damages resulting from unduly prejudicial rates only where the evidence as to fact and amount of damage would be sufficient to sustain a recovery in court. Inman-Poulsen Lumber Co. *v.* S. P. Co., 357 (362).

Agreement by the Lake Terminal and trunk lines that if reparation should be awarded on basis of the Cleveland-Lorain district rates that the Lake Terminal would participate in the payment of damages to extent its charges covered by the claims exceeded 8 cents per ton, net or gross as rated, but not to exceed its published charges, *Held:* This absorption would not have resulted in any rebate or unlawful discrimination in favor of affiliated industries. National Tube Co. *v.* L. T. R. R. Co., 469 (482).

Claim of the Lake Terminal for reparation from the trunk line carriers to extent of the difference between the divisions or absorptions paid to it since March 15, 1917, and the amounts herein found reasonable, *Held:* As tariff charge published by the Lake Terminal was absorbed under a stipulation between the Lake Terminal and the trunk lines, reparation denied. Id. (484).

Neither costs nor interest paid by complainants, incidental to unsuccessful litigation in the courts, of which the unreasonable freight charges were not the proximate cause, can be included in an award of reparation. But allowance of interest was the equivalent of payment of claims in suit when due and payable, or of the judgments when entered, and fixes the date as of which interest on the unreasonable charges is allowable. Id. (600).

A departure from the provisions of the fourth section of the act, protected by appropriate application, does not of itself afford a basis for an award of damages. Schlitz Brewing Co. *v.* Director General, 610 (611).

DAMAGES—Continued.

He who has paid and borne an unreasonable charge for transportation may recover the difference between the amount so paid and that which would have accrued at a reasonable rate. Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (678).

Where a departure from the long-and-short-haul provision of the act exists, whether the higher rate from the intermediate point is protected by an application filed with the Commission or not, to support an award of reparation complainant must show that the higher rate charged from the intermediate point and paid and borne by complainant was unreasonable or that it was damaged as a result of a violation of section 3. Park *v.* L. & N. R. R. Co., 703 (705).

To support an award of reparation under section 3 a complainant must show that the loss of profit or other damage claimed was directly and solely due to the lower rate enjoyed by a competitor. Id. (706).

The fact that a competitor may have made or have had an opportunity to make a larger margin of profit by a rate less than a maximum reasonable rate is no proof that the competitor's rate caused damages for which reparation may be awarded. Id. (707).

Misquotation of a rate or the fact of there being a lower rate over available routes other than route of movement affords no basis for an award of reparation. Helena Traffic Bureau *v.* Director General, 708 (709).

Complainant not a party to the transportation records but shipments were made for its account and it is the real party in interest and entitled to any reparation which may be awarded. Sunland Oil Co. *v.* Director General, 753 (754).

DECLARED VALUE. *See* VALUE.

DELAY. *See* LOSS AND DAMAGE.

DELIVERY.

Practice of the M. P. and of the Cotton Belt, in imposing a greater charge for delivery of cotton at compresses located on the Union Ry. in Memphis, Tenn., than the corresponding charge for delivery at East St. Louis, Ill., found to subject Memphis to undue disadvantage. Memphis-Southwestern Investigation, 515 (550, 575).

Rates on sand and gravel from Kickapoo, Ind., to Chicago, Ill., and points in the Chicago switching district, found unreasonable and unduly prejudicial to extent they exceed, for local delivery, the rates from Ginger Hill, Ill., and by more than 5 cents the rates from Algonquin, Ill., and other inner-zone points; and for joint and belt line deliveries, rates which shall not exceed 70 cents per ton. Reparation awarded. Kickapoo Sand & Gravel Co. *v.* Director General, 657.

On a shipment consigned without intermediate routing carriers seasonably advised as to delivery. Intermediate carrier withheld shipments from delivering line at a point intermediate to delivering point where demurrage accrued. *Held*: Demurrage unlawful as carriers contracted to make delivery specified in the bill of lading. Reparation awarded. Butterfield Co. *v.* N. O. & N. E. R. R. Co., 741.

DEMURRAGE.

On shipments of hay held at Sayre, Pa., for diversion orders, complainant advised cars could not be forwarded "New York lighterage" on account of embargo, unless permission obtained from eastern freight agent by consignees. Delivery made at Jersey City and consignee gave notice

DEMURRAGE—Continued.

to forward to East 149th Street, N. Y. Delivery not made to New York until embargo lifted. Demurrage not found unreasonable. Selien *v.* L. V. R. R. Co., 117.

Demurrage charges on petroleum products, in tank-car loads, shipped to Kassel, La., for export, accruing because steamers were diverted to other ports on account of war requirements, found unreasonable and unduly prejudicial to extent they exceeded those which would have accrued under 10 days' free-time rule in effect at New Orleans and other Louisiana ports. Reparation awarded. New Orleans Refining Co. *v.* L. Ry. & Nav. Co., 131.

Demurrage charges found legally applicable and not shown unreasonable, as mailing of reconsignment order, without regard to its delivery, was not in law a compliance with requirements of governing tariffs, by the terms of which only orders "received" sufficed. Wheeler *v.* Director General, 149.

Demurrage charges on salvaged barley accruing because of inability to unload, due to frozen condition of shipments, and because cars were bunched, not shown unreasonable or unlawful following *Davis Sewing Machine Co.*, 51 I. C. C., 191. Delp Grain Co. *v.* Director General, 175.

On lumber originally consigned to Chattanooga, Tenn., instructions mailed and telegraphed to defendant's agents at Nashville and Chattanooga for reconsignment to Philipsburg, Pa. Due to error in transmission of telegram defendant diverted shipment to West Philadelphia, Pa., where demurrage accrued. Shipment ultimately forwarded to Philipsburg. *Held:* Detention at Philadelphia due to railroad error and no demurrage lawfully accrued at that point. Reparation awarded. Southern Lumber & Mfg. Co. *v.* C. of G. Ry. Co., 225.

Shipper notified by telephone that destination specified was a prepay station and that charges would have to be paid. Shipment held pending settlement of charges and demurrage accrued. Shipper contends that check was sent the day following notice that charges would have to be prepaid. *Held:* Demurrage legally applicable, and the mere mailing of the check, which was not received, did not satisfy the tariff obligation to prepay charges. Ruddock Orleans Cypress Co. *v.* Director General, 236 (238).

Upon arrival of shipment of sacked corn meal, defendant wired complainant that consignee had refused delivery, and was advised to store. Defendant did not store promptly. *Held:* Demurrage should have terminated upon receipt of notice to store, and charges for storage based upon car demurrage rules the same as if the freight had remained in the car, found illegal. Piqua Milling Co. *v.* E. R. R. Co., 239.

Two cars of tack plate shipped to Baltimore, Md., for export, there stored, and subsequently reconsigned to New York on account of not obtaining vessel engaged. *Held:* Domestic demurrage charges and not export storage charges legally applicable. United Shoe Machinery Corp. *v.* Director General, 253.

Demurrage charges increased after shipment had left point of origin, and upon arrival at destination, increased charges assessed. *Held:* Off-track storage not in transit, track storage, and demurrage are controlled by tariffs in effect, contemporaneously with the accrual of these services; off-track storage in transit by tariffs in effect upon date of shipment. Id. (256).

DEMURRAGE—Continued.

Demurrage charges found illegal as tariff made no restriction against reconsignment to embargoed points or for detention charges on shipments so reconsigned. Reparation awarded. Ferguson Lumber Co. *v.* Director General, 335.

Demurrage charges found illegal due to action of agent in disregarding shipper's request to make out new bill of lading on proper form, and in failing to make proper correction on original bill of lading in lieu thereof. Reparation awarded. Southern Lumber Co. *v.* Director General, 343.

After court proceedings instituted for collection of certain demurrage charges, complaint filed before the Commission alleging such charges unreasonable. *Held:* Upon a complaint to secure a ruling upon reasonableness of such charges, and to obtain relief from payment of same, legal proceedings therefore having been instituted, the Commission may inquire into the reasonableness and determine that issue, but questions of fact to be determined by the court. Charges not found unreasonable. Held Bros. *v.* E. P. & N. E. R. R. Co., 416.

Car of coal placed on private sidetrack March 16, 1917, and unloaded same day. Sidetrack extended in part over tract not owned by complainant and due to delays in the purchase thereof notice served upon defendant that legal proceedings would be instituted if rolling stock should be moved over this sidetrack. Defendant did not remove car until March 20. *Held:* As tariff provided that "a car held for unloading is considered released when lading removed," and car was not held for or by complainant after March 16, demurrage unauthorized. Reparation awarded. Holland Aniline Co. *v.* P. M. Ry. Co., 617.

On a shipment consigned without intermediate routing, carriers seasonably advised as to delivery. Intermediate carrier withheld shipments from delivering line at a point intermediate to delivering point where demurrage accrued. *Held:* Demurrage unlawful as carriers contracted to make delivery specified in the bill of lading. Reparation awarded. Butterfield Co. *v.* N. O. & N. E. R. R. Co., 741.

The Commission has condemned the assessment of demurrage on shipments moving under joint rates and withheld from delivering lines, parties to those rates. Id. (743).

DENSITY OF TRAFFIC. *See* CIRCUMSTANCES AND CONDITIONS; VOLUME OF TRAFFIC.

DESCRIPTION. *See* MARKING PACKAGES.

DETENTION. *See* DEMURRAGE.

DIFFERENTIAL. *See also* ARBITRARIES.

On lignite coal from Pikeview, Colo., a branch-line point, to interstate points on the C., R. I. & P. Ry., combination rates on Roswell, Colo., not shown unreasonable but found unduly prejudicial to extent they exceed by more than 10 cents the rates from the Keystone mine, a branch-line point near Roswell, to same destinations. Pikes Peak Consolidated Fuel Co. *v.* Director General, 249.

Class rates from New Orleans, La., to Arkansas City and Caldwell, Kans., should not exceed the class rates to Kansas City, Mo., and to points north and east of Arkansas City and Caldwell the class rates should not exceed those to Arkansas City and Caldewll by differentials in excess of those herein prescribed. Memphis-Southwestern Investigation, 515 (570, 576).

DIFFERENTIAL—Continued.

Differentials over Kansas City, Mo., and Omaha, Nebr., approved for constructing class rates from New Orleans, La., to Omaha, Nebr., and Sioux City, Iowa. Id. (572, 577).

Present adjustment of rates, under which through rates to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., are generally made up of the rates to and from Nashville, Tenn., found unduly prejudicial to such points to extent that through rates exceed the rates to Nashville plus 75 per cent of the local rates from Nashville. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (656).

DIRECT LINE.

Rate on bananas from Mobile, Ala., and New Orleans, La., to Miami, Okla., a point not on the direct line to Kansas City, Mo., not found unreasonable as compared with lower rate to competing points in the same general territory on the direct line to Kansas City. Thomas Fruit Co. *v.* Director General, 605.

DIRECTOR GENERAL. *See also* FEDERAL CONTROL ACT.

It can not be said that the Director General competes with himself in the operation of the lines under his control or that the competition which afforded the excuse for that practice prior to his assumption of control of such carriers should or can be perpetuated by him during such control. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (391).

Complaint seeking order for the future requiring establishment of refrigerator-express rates on strawberries c. l., such shipments to be carried in passenger trains or trains making passenger-train time, dismissed as Director General not made a party defendant, although opportunity for such action afforded. Campbell *v.* Southern Exp. Co., 633.

DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES; SECTION 3.

A lower basis of divisions of joint through-passenger fares between points in California and Salt Lake City, Utah, and points north and east thereof, accorded complainant than defendants allow each other of similar joint fares, found unjustly discriminatory and unlawful, in violation of the second paragraph of section 3 of the act. Reparation awarded. Western Pacific R. R. Co. *v.* S. P. Co., 71.

If a carrier, due to some compelling force, establishes a lower rate than the Commission could require it to establish, and if such a rate engendered discrimination, the Commission's power to require the discrimination removed operates irrespective of its lack of power to fix the rate. Id. (74).

The power to remove a discrimination does not necessarily involve the power to prescribe. Id. (74).

Whether or not a line is strong or weak is not an essentially determinative factor in deciding discrimination. Id. (79).

Wherever and whenever discrimination is practiced as between carriers and connections with respect to services rendered under the same circumstances and conditions, unlawful results follow. Id. (81).

Bill of lading provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay, found not to prohibit payment of meritorious claims, seasonably filed with the carrier, after the two year and one day period has elapsed; but in that they do not accord the shipper the right to a reasonable period after declination of a claim within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, discriminatory, and unduly prejudicial. Reasonable provision prescribed. Decker & Sons *v.* Director General, 453.

DISCRIMINATION—Continued.

In discrimination cases it must not only be shown that the discrimination alleged to exist operated to the injury of the complainants, but also that they have been damaged and the amount thereof. Compton Coal Co. *v.* D. & R. G. R. R. Co., 718 (720).

DISQUE SCALE.

Illinois scale compared with. Illinois Classification, 290 (300).

Recommended that scale of class rates under Illinois classification be cancelled and that the Disque scale be applied between certain points herein set forth. Id. (302).

DISTANCE SCALE. *See also* CLASS RATES; DISQUE SCALE; SCALE OF RATES; SHREVEPORT SCALE.

Illinois scale compared with Disque scale. Illinois Classification, 290 (300).

While the Commission may not set a maximum scale which fails to cover attested costs, it would not appear unreasonable to prescribe a scale equal to indicated costs where the carriers propose a scale differing only by a negligible amount from that prescribed, and where a scale covering not only all costs but average overhead charges calculated thereon would drive traffic to other avenues of transportation. Memphis-Southwestern Investigation, 515 (531).

Maximum scale prescribed for application in the southwest, for single-line application only, the 25 per cent increase not included. Appendix 1. Id. (532, 541, 544, 551, 553, 555).

Proposal to apply a uniform scale between points in Oklahoma and Kansas encounters the difficulty that the Kansas rates are said to constitute an integral part of the western trunk line adjustment. Application disapproved without making a definite finding as to the propriety of doing so. Id. (533).

Where distance scales of rates are rigidly applied, all points should be given the benefit of their short-line distance, and it is impracticable where rates are constructed on a distance basis to follow the actual movement of traffic through alternative channels. Id. (545).

DISTURBANCE OF ADJUSTMENT. *See also* ADJUSTMENT OF RATES.

The fact that correction of rates that are unduly prejudicial will or may require reductions or corrections as to other commodities can not be accepted as a valid defense. Watertown Sash & Door Co. *v.* Director General, 186 (193).

Proposal to apply a uniform scale between points in Oklahoma and Kansas encounters the difficulty that the Kansas rates are said to constitute an integral part of the western trunk line adjustment. Application disapproved without making a definite finding as to the propriety of doing so. Memphis-Southwestern Investigation, 515 (533).

Import rate on nitrate of soda to Holmes and Joplin, Mo., were the same. Subsequently the rate to Joplin reduced, but not to Holmes. *Held:* Rate to Holmes not shown unreasonable, but found unduly prejudicial to extent it exceeds the rate to points within the Joplin group. Reparation denied. Excelsior Powder Mfg. Co. *v.* Director General, 725.

DIVERSION. *See* RECONSIGNMENT.

DIVISIONS.

A lower basis of divisions of joint through passenger fares between points in California and Salt Lake City, Utah, and points north and east thereof, accorded complainant than defendants allow each other of similar joint fares, found to be unlawful, in violation of the second paragraph

DIVISIONS—Continued.
of section 3 of the act. Reparation awarded. Western Pacific R. R. Co. *v.* S. P. Co., 71.
The expression of rates and charges in the form of divisions makes them none the less rates and charges which may be discriminatory. Id. (73).
Contention that power of the Commission in prescribing divisions of joint rates is limited by the terms of section 15 to cases in which such joint rates were prescribed by the Commission, not sustained. Id. (73).
Carriers that are disadvantageously located are frequently willing to accord liberal divisions in order to be permitted to share in traffic to or from a point reached only by a competitor. Id. (81).
Carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of their line haul, but a carrier with such an advantage may not lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms and demand from another connection a division so high as to make it impossible for it to share therein on a compensatory basis. Id. (81).
Ordinarily the passenger or shipper is not interested in the division of joint rates between carriers. Id. (81).
Received by tap lines out of the through rate should have a proper relation to the service which they perform. New Orleans, Natalbany & Natchez Ry. Co. *v.* I. C. R. R. Co., 113 (116).
In laying down a general rule for the determination of divisions of tap lines, it is impracticable to require a computation in each case of the actual distance moved by engines or cars in effecting deliveries. Id. (116).
DOUBLE-DECK CARS.
Defendants' tariff should provide that if a double-deck car is ordered, and in lieu thereof two single-deck cars are furnished for the convenience of the carrier, they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of six days is allowed the carriers in which to furnish the car ordered. Coulter *v.* C., M. & St. P. Ry. Co., 165.
DOUBLE INCREASE.
Combination rate on coal, both factors of which were increased, found unreasonable to extent it exceeded lower rate applicable via another route and subsequently established via route of movement. Reparation awarded. Gosline & Co. *v.* Director General, 220.
On railway fuel and commercial coal, each factor of the proportional rates was increased 15 cents. *Held:* Double increase not justified, as permission under which the increase was allowed construed as authorizing an increase in the through rate, whether maintained as joint or combination, of not more than 15 cents. Reparation awarded. Mississippi River & Bonne Terre Ry. *v.* Director General, 674.
EARNINGS.
While ton-mile and car-mile earnings generally decrease as distance increases, the fact that these earnings from the farther distant point are greater than from the nearer point does not of itself establish the unreasonableness of the rate from the farther distant point. Beaumont Chamber of Commerce *v.* Director General, 428 (429).
The minimum carload weight is a factor in the carload rate, and in connection with the rate determines the carload earnings. Timmons *v.* B., C. & A. Ry. Co., 495.

EARNINGS—Continued.

The fact that rates on a certain commodity yield revenue per ton-mile higher than average on all traffic can not be accepted as conclusive evidence of the unreasonableness of such rates. New York Commission of Highways *v.* Director General, 619 (622).

ELECTRIC LINE.

Through routes and joint rates between points on the Illinois Traction System and points on the New York Central prescribed. St. Louis Electric Terminal Ry. Co. *v.* C., C., C. & St. L. Ry. Co., 52 (57, 59).

EMBARGO.

On shipments of hay held at Sayre, Pa., for diversion orders, complainant advised cars could not be forwarded "New York lighterage" on account of embargo, unless permission obtained from eastern freight agent by consignees. Delivery made at Jersey City and consignee gave notice to forward to East One hundred and forty-ninth Street, N. Y. Delivery not made to New York until embargo lifted. Demurrage not found unreasonable. Sellen *v.* L. V. R. R. Co., 117.

Demurrage charges found illegal, as tariff made no restriction against reconsignment to embargoed points, or for detention charges on shipments so reconsigned. Reparation awarded. Ferguson Lumber Co. *v.* Director General, 335.

Following *Wall Rope Works*, 49 I. C. C., 199, agent's act of refusing to accept certain c. l. shipments of rope and compelling shipper to forward as l. c. l. traffic, found to have been unauthorized, as embargo against carload traffic had been removed. Reparation awarded. Wall Rope Works (Inc.) *v.* P. R. R. Co., 337.

EMERGENCY RATES.

Class E rates on hay not shown unreasonable as compared with lower commodity rates in the opposite direction, established because of emergency in shortage of feed. MacIntyre *v.* C., St. P., M. & O. Ry. Co., 421.

In original report, 53 I. C. C., 344, rates on printing, book, and wrapping paper from Kalamazoo and other Michigan mills to eastern trunk line territory found unduly prejudicial of Virginia points, which carriers attempted to remove by submission of an emergency basis of rates. *Held:* Commission can not approve adjustment submitted by the carriers, even as an emergency measure, and undue prejudice found to exist required to be removed. Michigan Paper Mills Traffic Asso. *v.* N. Y. C. R. R. Co., 679.

EQUALIZING RATES.

Whether or not rates in any district should be grouped so as to equalize points on trunk lines and their connections in that district is essentially a rate-making matter involving exercise of judgment. National Tube Co. *v.* L. T. R. R. Co., 469 (479).

ERRONEOUS WEIGHT. *See* MINIMUM WEIGHT.

ERROR. *See also* MISQUOTATION OF RATE.

On lumber, originally consigned to Chattanooga, Tenn., instructions mailed and telegraphed to defendants' agent at Nashville and Chattanooga for reconsignment to Philipsburg, Pa. Due to error in transmission of telegram defendant diverted shipment to West Philadelphia, Pa., where demurrage accrued. Shipment ultimately forwarded to Philipsburg. *Held:* Detention at Philadelphia due to railroad error and no demurrage lawfully accrued at that point. Reparation awarded. Southern Lumber & Mfg. Co. *v.* C. of G. Ry Co., 225.

ERROR—Continued.

Following *Wall Rope Works*, 49 I. C. C., 199, agent's act of refusing to accept certain c. l. shipments of rope and compelling shipper to forward as l. c. l. traffic, found to have been unauthorized, as embargo against carload traffic had been removed. Reparation awarded. Wall Rope Works (Inc.) *v.* P. R. R. Co., 337.

Demurrage charges found illegal, due to action of agent in disregarding shipper's request to make out new bill of lading on proper form, and in failing to make proper correction on original bill of lading in lieu thereof. Reparation awarded. Southern Lumber Co. *v.* Director General, 343.

Rates on Portland cement found unreasonable due to failure of carrier's agent to publish the same rates as were in effect to an intermediate point. Reparation awarded. Lehigh-Portland Cement Co. *v.* Director General, 615.

EXCEPTIONS.

Minimum-charge rule as applied to class rates not applicable to ratings provided in the exception sheet based on a percentage of the class ratings. Boldt Paper Mills *v.* Director General, 331 (332).

EXPORT AND DOMESTIC.

Two cars of tack plate shipped to Baltimore, Md., for export, there stored, and subsequently reconsigned to New York on account of not obtaining vessel engaged. *Held:* Domestic demurrage charges and not export storage charges legally applicable. United Shoe Machinery Corp. *v.* Director General, 253.

Contention that words "actually exported" in tariff did not limit the exportation from the port of Baltimore, and that export storage charges named therein applied when shipment was actually exported from any other port. *Held:* Tariff applied only on shipments actually exported from Baltimore. Id. (255–256).

EXPORT RATES.

Joint first-class rate on cotton, in compressed bales, from Mobile, Ala., to Savannah, Ga., for export, found unreasonable to extent it exceeded increased commodity rate permitted in *New Orleans Cotton Exchange*, 46 I. C. C., 712. Reparation awarded. Inman, Akers & Inman *v.* Director General, 146 (147).

On iron and steel articles from Chicago, Ill., to Pacific coast ports, not found unreasonable or unduly prejudicial to Chicago of Pittsburgh, Pa., as Pittsburgh, due to its location nearer the Atlantic seaboard, would still have the benefit of the route through the Atlantic ports at lower rates. Inland Steel Co. *v.* Director General, 462.

EXPRESS RATES.

Through second-class express rates on cream, in cans, from New Mexico and Texas points, via interstate routes, to El Paso, Tex., exceeded aggregate of intermediate rates subsequently established. Reparation awarded. Rio Grande Valley Creamery Co. *v.* Wells Fargo & Co., 425.

On cherries and fresh strawberries found unreasonable to extent they exceeded lower rates subsequently established. Reparation awarded. Haley & Lang Co. *v.* American Exp. Co., 747.

EXPRESS SERVICE.

Complaint seeking order for the future requiring establishment of refrigerator express rates on strawberies c. l., such shipments to be carried in passenger trains or trains making passenger-train time, dismissed as

EXPRESS SERVICE—Continued.

Director General not made a party defendant, although opportunity for such action afforded. Campbell *v.* Southern Exp. Co., 633.

Jurisdiction of Commission to order express refrigerator service questioned following *R. R. Com'rs of Florida*, 44 I. C. C., 645, in which it was held that the Commission is without authority to require carriers to acquire refrigerator cars for use in express service. Complainants, however, asked only that defendant haul express refrigerator cars furnished by shipper and case cited held not controlling here. Id. (635–636).

FACTOR. *See also* PROPORTIONAL RATES.

Rates on knitting-factory products from producing points in Tennessee, Georgia, and Alabama to Little Rock, Ark., alleged unreasonable as factor west of Memphis was much greater than factor east of Memphis. *Held:* Factor west of the Mississippi River does not appear to be out of harmony with other rates in the same general territory. Merchants Freight Bureau *v.* A. C. L. R. R. Co., 119 (120).

Each factor of proportional rates on railway fuel and commercial coal, increased 15 cents. *Held:* Double increase not justified and unreasonable as permission under which increase was allowed construed as authorizing an increase in the through rate, whether maintained as joint or combination, of not more than 15 cents. Reparation awarded. Mississippi River & Bonne Terre Ry. *v.* Director General, 674.

FARES. *See* PASSENGER FARES.

FEDERAL CONTROL ACT. *See also* DIRECTOR GENERAL.

Port to port rates filed prior to those filed by the Director General not subject to the jurisdiction of the Commission. New Bedford Board of Commerce *v.* Director General, 274 (275).

Rate of 15 cents per long ton on limestone from Jamesville, N. Y., to Solvay, N. Y., increased following *Fifteen Per Cent Case* and again by Director General to 40 cents. Upon protest rate reduced to 30 cents. *Held:* Rates charged on shipments moving after June 25, 1918, found unreasonable to extent they exceeded or may exceed rate of 25 cents prescribed herein. Reparation awarded. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280.

When General Order No. 28 was promulgated, there was no intent permanently to abandon the standards by which the rights of individual shippers had been determined during peace. It is to be presumed that the authorities contemplated ultimate readjustment in cases where their methods might work undue hardship upon particular shippers. Id. (288).

The words "just and reasonable" as used in the federal control act, have substantially the same meaning as in the act to regulate commerce, from which they are drawn. Id. (288–289).

Under section 10 of the federal control act, power to determine the justness and reasonableness of intrastate rates initiated by the Director General, and to award reparation on shipments moving thereunder, is vested in the Commission. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280 (281); Swift & Co. *v.* Director General, 324 (325–326); Boldt Paper Mills *v.* Director General, 331; National Fireproofing Co. *v.* Director General, 485.

Collection of switching charges of the Norfolk & Portsmouth belt line on noncompetitive traffic while absorbing such charges on shipments originating at competitive points, not found unreasonable under section 1 of the act to regulate commerce but unreasonable under section 10 of

FEDERAL CONTROL ACT—Continued.
the federal control act. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (391).
Carriers under federal control must be treated as a single line. Id. (387).
Present intrastate rate, initiated by the Director General, on coal from Nelsonville, Ohio, a point in the Hocking field, to Aultman, Ohio, found unreasonable to extent it exceeded rates from the Hocking field to points on the Erie R. R. east of Akron, Ohio, to and including Ravenna. National Fireproofing Co. *v.* Director General, 485.
State rates in effect prior to June 25, 1918, not initiated by the President within the meaning of the federal control act, and Commission is without jurisdiction to consider them. New York Commission of Highways *v.* Director General, 619 (620).
Carriers under federal control authorized by Railroad Administration to apply rates on crushed stone, sand, and gravel during period May 1 to Dec. 31, 1919, when for use in road building and maintenance, and when consigned to, and freight charges paid by, a state government, 10 cents less than regularly published rates, but with a minimum charge of 40 cents per net ton. The Commission has no authority to require carriers to observe such rates. Id. (624).
FERRY CAR SERVICE. *See* TRAP CAR SERVICE.
FINDING OF COMMISSION. *See* ORDER OF COMMISSION.
FIXING RATES.
If a carrier, due to some compelling force, establishes a lower rate than the Commission could require it to establish, and if such a rate engendered discrimination, the Commission's power to require the discrimination removed operates irrespective of its lack of power to fix the rate. Western Pacific R. R. Co. *v.* S. P. Co., 71 (74).
FREE TIME. *See* DEMURRAGE.
GENERAL ORDER No. 28. *See* FEDERAL CONTROL ACT.
GOVERNMENT RATES.
Carriers under federal control authorized by Railroad Administration to apply rates on crushed stone, sand, and gravel during period May 1 to Dec. 31, 1919, when for use in road building and maintenance, and when consigned to, and freight charges paid by, a State government, 10 cents less than regularly published rates, but with a minimum charge of 40 cents per net ton. The Commission has no authority to require carriers to observe such rates. New York Commission of Highways *v.* Director General, 619 (624).
GROUP RATES.
Method of making rates upon the group basis, although it necessarily involves inequalities at and near the group boundaries, has often been upheld by the Commission. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (144).
Rate on staves and heading from Star City, Ark., located on the Gould Southwestern Ry., to New Orleans, La., found unreasonable to extent it exceeded or may exceed the group rates from Gould and Furth, Ark., to New Orleans. Reparation awarded. Chop *v.* Director General, 182.
Rates legally applicable on mill cinder from Cleveland, Ohio, to Charlotte, N. Y., a point in the Rochester group, found unreasonable to extent they exceeded rates in effect to Dubois and Punxsutawney, Pa., points located in the Emporium group, as same rates generally apply to both groups. Reparation awarded. McKinney Steel Co. *v.* N. Y. C. R. R. Co., 449.

GROUP RATES—Continued.

Whether or not rates in any district should be grouped so as to equalize points on trunk lines and their connections in that district is essentially a rate-making matter involving exercise of judgment. National Tube Co. *v.* L. T. R. R. Co., 469 (479).

Practice of trunk lines in placing industries in a given district upon a rate parity whether located on its own line, a connecting trunk line, or on a common-carrier industrial line, and including in the service the placing of cars at convenient points for loading or unloading, has been approved by the Commission, and their equal application required. Id. (479).

ILLINOIS CLASSIFICATION.

Investigation of, 290.

Is common to the three great classification territories, official, western, and southern, which makes it the center of conflicting territorial rate adjustments. Id. (295).

Basis used by Illinois commission in fixing ratings in. Id. (298).

Recommended that corresponding portions of consolidated classification, subject to modifications indicated in *Consolidated Classification Case*, 54 I. C. C., 1, be substituted for rules, descriptions, packing specifications, and minimum and estimated weights of the Illinois classification. Id. (302).

Recommended that scale of class rates under Illinois classification be canceled and that Disque scale, governed by official classification, and class rates governed by western classification, be substituted therefor, between points herein set forth. Id. (302).

IMPORT RATES.

On nitrate of soda to Holmes and Joplin, Mo., were the same. Subsequently the rate to Joplin reduced but not to Holmes. *Held:* Rate to Holmes not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to points within the Joplin group. Reparation denied. Excelsior Powder Mfg. Co. *v.* Director General, 725.

INBOUND AND OUTBOUND.

Contention that in-and-out shipments are wholly unrelated is not consistent with an appeal to the Commission's jurisdiction over the inbound factor, or complainant's right to use the reshipping rate outbound. Peoria Board of Trade *v.* A., T. & S. F. Ry. Co., 42 (49).

INDIRECT LINES. *See* CIRCUITOUS ROUTES.

INFORMAL COMPLAINT. *See* LIMITATION OF ACTION.

INSURANCE. *See* MARINE INSURANCE.

INTERCHANGE OF TRAFFIC.

Lake Terminal's estimates for year 1918 representing share of railway operating expenses and taxes attributable to each ton of interchange freight, and the proportionate charge on interchange traffic necessary to yield a return of 6 per cent upon that portion of the value of the property allocated to such traffic. National Tube Co. *v.* L. T. R. R. Co., 469 (482–484).

INTERCORPORATE RELATIONSHIPS.

Competition between the rail carriers serving Nashville, Tenn., found not to be of such a nature as to affect the measure of the rates to that point, as the record in *Financial Relations, etc., L. & N. R. R. Co.*, 33 I. C. C., 168, clearly established that the purpose of control of the N. C. & St. L. through stock ownership by the L. & N., was primarily to restrict competition and maintain rates. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (652).

INTEREST.

Neither costs nor interest paid by complainants, incidental to unsuccessful litigation in the courts, of which the unreasonable freight charges were not the proximate cause, can be included in an award of reparation. But allowance of interest was the equivalent of payment of claims in suit when due and payable, or of the judgments when entered, and fixes the date as of which interest on the unreasonable charges is allowable. Portland Cattle Loan Co. *v.* Director General, 597 (600).

INTERMEDIATE CARRIER. *See also* BELT LINE.

On a shipment consigned without intermediate routing carriers seasonably advised as to delivery. Intermediate carrier withheld shipments from delivering line at a point intermediate to delivering point where demurrage accrued. *Held:* Demurrage unlawful, as carriers contracted to make delivery specified in the bill of lading. Reparation awarded. Butterfield Co. *v.* N. O. & N. E. R. R. Co., 741.

INTERMEDIATE POINTS.

Rate to Little Rock, Ark., higher than to Memphis, Tenn., in contravention of the fourth section. Memphis rate published subject to rule 77 of Tariff Circular 18–A as to intermediate points of origin, but not as to intermediate destinations. *Held:* If carriers had extended rule 77 to cover intermediate destinations, reparation would have followed. Roxana Petroleum Co. of Okla. *v.* Director General, 607 (608).

INTRASTATE RATES. *See* STATE AND INTERSTATE; STATE RATES.

INVESTIGATION.

Illinois classification, 290.

Memphis-Southwestern, 515.

ISSUE.

Contention that the fourth section was violated due to maintenance of a lower combination rate via a route other than route of movement. *Held:* As none of the shipments moved over the lower rated route any fourth section departure with respect thereto is beyond the issues of the case. Beaumont Chamber of Commerce *v.* Director General, 110 (111).

Too limited to permit entry of order prescribing specific class rates on printing, book, and wrapping paper for application from and to points in eastern trunk line territory and between points in this territory and New England. Consideration of such rates should await submission by carriers of revised scale of class rates for use from and to these points or filing of appropriate complaints. Michigan Paper Mills Traffic Asso. *v.* N. Y. C. R. R. Co., 679 (682).

JOBBERS' RATES.

Class rates from St. Louis, Mo., to jobbing points in southern Arkansas found unreasonable and unduly prejudicial to said points of Pine Bluff and Little Rock, Ark., to extent they exceed the corresponding rates to Pine Bluff and Little Rock for like distances. Memphis-Southwestern Investigation, 515 (551, 575).

JOINT RATES.

A railway, as a shipper over the lines of other carriers, is lawfully entitled to take advantage of joint rates applying to points on its own line, providing its shipments are consigned to such points and are, in good faith, sent to such billed destinations. Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (677).

"JUNCTION."

The question whether the word "junction" as used in order in the *Tap Line Case*, 31 I. C. C., 490, relates to the point of connection between two main lines or the point of actual placement of cars interchanged, being under consideration, *Held:* That the junction within the meaning of that order is the point or locality where the two main lines meet and connect. New Orleans, Natalbany & Natchez Ry. Co. *v.* I. C. R. R. Co., 113.

JUNCTION POINT RATES.

Rate on yellow-pine lumber from Lenwil, La., to Ash Grove, Kans., located on the Salina Northern Railroad, exceeded the junction point rate subsequently made applicable to Ash Grove. Reparation awarded. Dietz Lumber Co. *v.* Director General, 21.

Rate on staves and heading from Star City, Ark., located on the Gould Southwestern Ry., to New Orleans, La., exceeded the rate on like traffic from Gould, Ark., the junction point. Reparation awarded. Chop *v.* Director General, 182.

JUNK.

On old thrashing engines, billed as scrap iron, rate on second-hand machinery assessed. *Held:* Tariff description of scrap iron, which applies "only on scraps or pieces of iron or steel of value for remelting purposes only," found not applicable to shipments here involved. Fargo Iron & Metal Co. *v.* N. P. Ry. Co., 65.

Charges legally applicable on rags and scrap rubber from Denver, Colo., to Chicago, Ill., and on junk and scrap metals, including scrap copper, brass, and aluminum from Denver, Colo., and Cheyenne, Wyo., to Chicago, Ill., and from Loveland, Colo., to St. Louis, Mo., in mixed carloads, found unreasonable to extent they exceeded rates prescribed in *Radinsky Case*, Unrep., 2174. Reparation awarded. Radinsky *v.* C., B. & Q. R. R. Co., 199.

Rates on scrap copper, brass, rags, and junk, in mixed carloads, from Trinidad, Pueblo, and Denver, Colo., to Chicago, Ill., found unreasonable to extent they exceeded rates prescribed in *Radinsky Case*, 55 I. C. C., 199. Reparation awarded. Radinsky *v.* C. & N. W. Ry. Co., 203.

JURISDICTION.

Following *Zelnicker Supply Co.*, 53 I. C. C., 308, the Commission is without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid. Orange Rice Milling Co. *v.* Director General, 19 (20); Reynolds Tobacco Co. *v.* P. R. R. Co., 33 (34); Gross *v.* Director General, 37 (38); Marfield Grain Co. *v.* Director General, 39 (41); National Shipbuilding Co. of Texas *v.* K. C. S. Ry. Co., 104 (105–106); Brock Candy Co. *v.* A. G. S. R. R. Co., 107 (109); Beaumont Chamber of Commerce *v.* Director General, 110 (112); Zelnicker Supply Co. *v.* Director General, 135 (136); Du Pont de Nemours & Co. *v.* Director General, 151 (153); Acme Cement Plaster Co. *v.* Director General, 179 (182); Gosline & Co. *v.* Director General, 220 (224); Southern Lumber & Mfg. Co. *v.* C. of G. Ry. Co., 225 (227); Fort Smith Commission Co. *v.* Director General 234 (235); Ruddock Orleans Cypress Co. *v.* Director General, 236 (238); Piqua Milling Co. *v.* E. R. R. Co., 239 (242); National Refining Co. *v.* Director General, 341 (342); Aetna Explosives Co. *v.* Director General, 350 (352); Chevrolet Motor Co. of Texas *v.* Director General, 601 (604); Roxana Petroleum Co. of Okla. *v.* Director General, 607 (610); Hechtman *v.* Director General, 672 (674); Mississippi River & Bonne Terre Ry. *v.* Director

JURISDICTION—Continued.

General, 674 (678); Frame & Co. *v.* Director General, 721 (723); Bennett Grain Co. *v.* Director General, 744 (746); Lowry Lumber Co. *v.* Director General, 751 (752); Sunland Oil Co. *v.* Director General, 753 (754).

Contention that power of the Commission in prescribing divisions of joint rates is limited by the terms of section 15 to cases in which such joint rates were prescribed by the Commission, not sustained. Western Pacific R. R. Co. *v.* S. P. Co., 71 (73).

If a carrier, due to some compelling force, establishes a lower rate than the Commission could require it to establish, and if such a rate engendered discrimination, the Commission's power to require the discrimination removed operates irrespective of its lack of power to fix the rate. Id. (74).

Port to port rates filed prior to those filed by Director General not subject to the Commission's jurisdiction. New Bedford Board of Commerce *v.* Director General, 274 (275).

The Commission's jurisdiction over intrastate rates, initiated by the Director General, attaches only to those in effect on and after June 25, 1918. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280 (281); Swift & Co. *v.* Director General, 324 (325–326); Boldt Paper Mills *v.* Director General, 331; National Fireproofing Co. *v.* Director General, 485.

Collection of charges not enforceable through this Commission. Heid Bros. *v.* E. P. & N. E. R. R. Co., 416 (420).

Following *Bills of Lading*, 52 I. C. C., 671, the Commission entertains no doubt of its jurisdiction to construe and pass upon the reasonableness of bill-of-lading provisions with respect to loss and damage claims. Decker & Sons *v.* Director General, 453 (455).

Not the function of the Commission to equalize disadvantages in location. Memphis-Southwestern Investigation, 515 (548).

Carriers under federal control authorized by Railroad Administration to apply rates on crushed stone, sand, and gravel during period May 1 to December 31, 1919, when for use in road building and maintenance, and when consigned to, and freight charges paid by, a state government, 10 cents less than regularly published rates, but with a minimum charge of 40 cents per net ton. The Commission has no authority to require carriers to observe such rates. New York Commission of Highways *v.* Director General, 619 (624).

State rates in effect prior to June 25, 1918, not initiated by the President within the meaning of the federal control act, and Commission is without jurisdiction to consider them. Id. (620).

Jurisdiction of Commission to order express refrigerator service, questioned following *R. R. Com'rs of Florida*, 44 I. C. C., 645, in which it was held that the Commission is without authority to require carriers to acquire refrigerator cars for use in express service. Complainants, however, asked only that defendant haul express refrigerator cars furnished by shipper and case cited held not controlling here. Campbell *v.* Southern Exp. Co., 633 (635–636).

"JUST AND REASONABLE."

The words, as used in the federal control act, have substantially the same meaning as in the act to regulate commerce, from which they are drawn. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280 (288–289).

KNOCKED DOWN. *See* SET UP AND KNOCKED DOWN.

LAKE TERMINAL RAILROAD COMPANY
History of. National Tube Co. *v.* L. T. R. R. Co., 469 (471).
Found to be a common carrier subject to the provisions of the act. Id. (476).
LEGAL RATES. *See also* CONFLICTING RATES; OVERCHARGES.
The law requires that the tariff shall name just and reasonable rates and charges which shall be collected by the carrier, but does not specify which of the parties to the transportation shall pay them. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).
Rates legally applicable on fresh-salted meats from Mason City, Iowa, to Chicago, Ill., St. Louis, Mo., Cudahy, Wis., and Dallas, Tex., prior to November 3, 1916, found to have been those applicable to fresh meats. Decker & Sons *v.* Director General, 433.
The application of a small quantity of salt to fresh meat does not change its character as such, and where there is no specific rate on fresh-salted meat the rate legally applicable is the rate on fresh meat. Id. (439).
LESS-THAN-CARLOAD. *See also* CARLOAD-AND-LESS-THAN-CARLOAD.
Rates on iron and steel articles to Montgomery, Ala., from Louisville, Ky., Cincinnati, Ohio, and Evansville, Ind., and St. Louis, Mo., East St. Louis and Belleville Ill., and points based thereon found unduly prejudicial to Montgomery to extent they exceed rates to Catoma, Ala. Montgomery Chamber of Commerce *v.* Director General, 688.
LIABILITY OF CARRIER. *See* LOSS AND DAMAGE.
LIKE KINDS OF TRAFFIC. *See also* COMPARATIVE RATES.
Canned milk and other canned goods are shipped under the same general conditions of transportation and their weights and values are not greatly different, and while by reason of analogy are generally given the same rates, are nevertheless distinct commodities, not competing with each other. Carnation Milk Products Co. *v.* Director General, 665 (667, 668).
When the rate compared is clearly shown to be less than that which the carrier could reasonably be required to publish, the Commission can not use that subnormal rate as a measure of the reasonableness of the rates on commodities, although they possess similar transportation characteristics. Id. (668).
It does not follow from the fact that because the rate on a commodity is reduced due to competitive conditions, that the carrier is compelled simultaneously to place similar commodities, not competitive, upon the same basis, or that a violation of the act necessarily results from the the failure so to do. Id. (668).
LIMITATION OF ACTION.
Claims filed by complainant for purpose of tolling the statute of limitations and like action taken by defendant who never filed special docket application. Complainant advised that application would be filed and have prompt consideration. *Held:* As complainant lulled into belief that its rights were protected finding in 49 I. C. C., 586, in which claims held abandoned, reversed herein. Rockford Paper Box Board Co. *v.* C., M. & St. P. Ry. Co., 262.
Bill of lading provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay found not to prohibit payment of meritorious claims, seasonably filed with the carrier, after the two year and one day period has elapsed; but in that they do not accord

LIMITATION OF ACTION—Continued.
the shipper the right to a reasonable period after declination of a claim within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, discriminatory, and unduly prejudicial. Reasonable provision prescribed. Decker & Sons *v.* Director General, 453.
Contention that section 10 of the uniform bill of lading permits a waiver of any of the terms or conditions of the bill of lading and that carriers have waived the two year and one day period by having paid certain claims after more than two years and one day had elapsed, although suit had not been instituted, not sustained. Id. (457).
While limitations in bills of lading must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment do not evidence any intent on the part of Congress to erect a statute of limitations barring the payment of seasonably filed claims after any given period. Id. (458).
Defendants may reasonably and properly provide that the period prescribed within which suit shall be instituted after the declination of a claim shall date from the definite declination in writing of the claim. Id. (460).
Where a shipper has complied with the carrier's requirements with respect to duly filing a claim he is entitled to a reasonable period after the declination of the claim within which to institute suit if he so desires. Id. (460).
No ruling ever made by the Commission prohibiting carriers from paying claims seasonably filed, on the ground that shipper permitted two years and one day to elapse without instituting suit. Id. (461).
Insufficient charges assessed on certain shipments at time of delivery. Carrier later obtained judgments for undercharges. Complainants paid the respective judgments, with interests and costs, and filed complaint within two-year statutory period thereafter. *Held:* Complaint not barred. Portland Cattle Loan Co. *v.* Director General, 597 (598).
As full tariff rates must be collected, charges can not be considered paid until fully paid, and cause of action does not accrue until full payment is made. Id. (598).
LINE HAUL.
Carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of their line haul, but a carrier with such an advantage may not lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms and demand from another connection a division so high as to make it impossible for it to share therein on a compensatory basis. Western Pacific R. R. Co. *v.* S. P. Co., 71 (81).
LOADING.
In General:
Cost of loading one shipment is of little value in determining the reasonable charges to be levied on traffic in general. Roberts & Schaefer Co. *v.* Director General, 277 (278).
The principle that the rate per 100 pounds should be lower on the commodity which loads more heavily than on another like commodity loading more lightly but otherwise transported under substantially similar circumstances and conditions is sound. Decker & Sons *v.* Director General, 433 (438).

LOADING—Continued.

Machinery: On machinery and parts, l. c. l., shipment loaded by initial carrier but unloaded by consignee. *Held:* Absence of a rule providing for application of the l. c. l. rate, plus a charge for loading, under which lower charges would result, not shown unreasonable or unduly prejudicial. Roberts & Schaefer Co. *v.* Director General, 277.

Poles and Piling: Method of loading on single cars, and when two or more cars required, described. National Pole Co. *v.* A., T. & S. F. Ry. Co., 625 (626-627).

LOADING AND UNLOADING.

On scrap iron arriving at Conshohocken, Pa., there partially unloaded, and reshipped at reduced weights to Coatesville, Pa., combination rates assessed. *Held:* Shipments not entitled to joint through rates, as one of the conditions precedent to a reconsignment privilege is that contents of car should remain unchanged. Kaufman & Sons Co. *v.* C. R. R. Co. of N. J., 268 (270).

LOCATION.

Carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of their line haul, but a carrier with such an advantage may not lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms and demand from another connection a division so high as to make it impossible for it to share therein on a compensatory basis. Western Pacific R. R. Co. *v.* S. P. Co., 71 (81).

Export rates on iron and steel articles from Chicago, Ill., to Pacific coast ports not found unreasonable or unduly prejudicial to Chicago of Pittsburgh, Pa., as Pittsburgh, due to its location nearer the Atlantic seaboard, would still have the benefit of the route through Atlantic ports at lower rates. Inland Steel Co. *v.* Director General, 462.

Not the function of the Commission to equalize disadvantages in location. Memphis-Southwestern Investigation, 515 (548).

LONG AND SHORT HAUL. *See also* INTERMEDIATE POINT; SECTION 4.

In General:

A departure from the provisions of the fourth section of the act, protected by appropriate application, does not of itself afford a basis for an award of damages. Schlitz Brewing Co. *v.* Director General, 610 (611).

Contention that the maintenance of higher rates from intermediate than from farther distant points were unlawful at the time of passage of the amended fourth section and could not be protected by applications filed with the Commission, not sustained, as the higher rates were the lawful rates notwithstanding the fact that through inadvertence lower rates were maintained from the farther distant points. Park *v.* L. & N. R. R. Co., 703 (705).

Where a departure from the long-and-short-haul provisions of the act exists, whether the higher rate from the intermediate point is protected by an application filed with the Commission or not, to support an award of reparation complainant must show that the higher rate charged from the intermediate point and paid and borne by complainant was unreasonable or that it was damaged as a result of a violation of section 3. Id. (705).

LONG AND SHORT HAUL—Continued.
In General—Continued.
Same minimum but lower rate applied from a farther distant point thereby creating a departure from the fourth section which defendant apparently removed by reducing the rate and increasing the minimum from the intermediate point. Departure, however, still exists when the minima are considered in connection with the rates and no justification therefor shown. Karchmer Iron & Metal Co. *v.* Director General, 730 (731).
Localities:
Albuquerque, N. Mex., and Holbrook and Prescott, Ariz.: Combination rates, legally applicable, on matches from Chico, Calif., to, exceeded rate to Alameda, N. Mex., a farther distant point. Diamond Match Co. *v.* Director General, 431 (432).
Arkansas points: Class D rate on scrap iron from points in southeastern Arkansas to Kansas City, Mo., exceeded lower commodity rate from Tallulah, La., a farther distant point, to same destination. Sonken-Galamba Iron & Metal Co. *v.* Director General, 339 (340).
Central and Elvine, Mo.: Rate on high explosives from Fayville, Ill., to Flat River, Mo., exceeding rate to Central and Elvine, Mo., farther distant points, found unlawful. Aetna Explosives Co. *v.* Director General, 350 (351).
Central freight association territory: Applications for authority to continue rates on lumber from the Virginia cities to points in, lower than from and to intermediate points denied via all lines as to points of origin, and via direct lines as to points of destination, but granted with qualifications, as to intermediate destinations reached by indirect lines. Garrett Lumber Co. *v.* C. & O. Ry. Co., 637 (643).
Coffeyville, Kans.: Rate on petroleum and its products from, to Little Rock, Ark., exceeded rate from Ponca City, Okla., but was not in excess of rate prescribed in *Merchants Freight Bureau*, 21 I. C. C., 573. *Held:* Rate not shown unreasonable and as no proof of damage resulting from alleged undue prejudice or from lower rate in effect from Ponca City, reparation denied. National Refining Co. *v.* M. P. R. R. Co., 35.
Columbia, Apen Hill, and Pulaski, Tenn.: Authority to continue rates on shelled corn from, to New Orleans, La., higher than from Mt. Pleasant, Tenn., and other farther distant points, denied. Park *v.* L. & N. R. R. Co., 703 (707).
De Ridder, La.: Defendants not desiring relief for the future, order of Commission granting authority to establish rates on evaporated skimmed milk containing vegetable fat, from Oconomowoc and Jefferson, Wis., to Lake Charles, La., which are lower than on like traffic to De Ridder, La., and other intermediate points, vacated. Hebe Co. *v.* Director General, 214 (217).
Dixon, Ill.: Rate on beer from Milwaukee, Wis., to, higher than to La Salle, Ill., a farther distant point, protected by application, found not unreasonable or otherwise unlawful. Schlitz Brewing Co. *v.* Director General, 610.
Kansas City, Mo.: Authority to continue rates on dressed beef or fresh meats, in straight or mixed carloads, from Omaha, Nebr., to Oklahoma City, Okla., lower than on like traffic from Kansas City and from or to other intermediate points, denied. Sulzberger & Sons Co. *v.* C., R. I. & P. Ry. Co., 691 (696).

LONG AND SHORT HAUL—Continued.
Localities—Continued.
Little Rock, Ark.: Authority to continue rates on knitting-factory products, in any quantity, from points in Tennessee, Georgia, and Alabama, to, and other points in Arkansas, lower than rates to intermediate points, denied. Merchants Freight Bureau of Little Rock, Ark. *v.* A. C. L. R. R. Co., 119 (121).
Little Rock, Ark.: Rate on gasoline in tank-car loads from Cushing, Okla., to, higher than to Memphis, Tenn., a farther distant point, not protected by appropriate application, found unlawful. Roxana Petroleum Co. of Oklahoma *v.* Director General, 607 (608).
Lugoff, S. C.: Rates on portland cement from Chapman, Pa., to, exceeded rates to Columbia, S. C., a farther distant point. Rate to Lugoff reduced and rate to Columbia increased to same basis, removing fourth section departure. Lehigh Portland Cement Co. *v.* Director General, 615.
Mississippi River points: Applications for authority to continue lower class and commodity rates to and from competitive points along the Mississippi River, St. Louis, Mo., and south, than to and from intermediate points, denied. Memphis-Southwestern Investigation, 515 (565, 576).
Montgomery, Ala.: Authority to continue rates on iron and steel articles from Louisville, Ky., Cincinnati, Ohio, and Evansville, Ind., St. Louis, Mo., East St. Louis and Belleville, Ill., and points based thereon to, higher than to Catoma, Ala., and other more distant points, denied. Montgomery Chamber of Commerce *v.* Director General, 688 (690).
Norfolk, Va.: First-class rate on wet nitrocellulose from, to Carneys Point, N. J., exceeded lower commodity rate from Hopewell, Va., to which Norfolk is intermediate via route of movement. Du Pont de Nemours & Co. *v.* Director General, 247.
Oklahoma points: Authority to continued class and commodity rates from New Orleans, La., to Wichita, Arkansas City, and Caldwell, Kans., lower than from New Orleans to intermediate Oklahoma points, denied. Memphis-Southwestern Investigation, 515 (572).
Okmulgee, Okla.: Rates on window glass from Fredonia, Kans., to Okmulgee, increased, and to Muskogee, Okla., and points in the Dallas-Fort Worth group, farther distant points, decreased. Departure not protected by application and must be promptly corrected. Curtis, Booth & Bentley Co. *v.* Director General, 511 (512–513).
Tennessee points: The competition with the boat lines operating on the Cumberland, Ohio, and Mississippi rivers encountered by defendants in transporting freight to Nashville, Tenn., is almost entirely potential and not of such a character as to control or affect materially the rail rates, or justify lower rates, to Nashville than to intermediate points. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (655).
Texarkana, Ark.-Tex.: Authority to continue to charge rates on scrap iron or steel and scrap iron or steel borings from Texas common points to Chicago, Ill., lower than on like traffic from Texarkana, an intermediate point, denied. Karchmer Iron & Metal Co. *v.* Director General, 730 (732).
LONG ARTICLES. *See* TWO CARS.

LOSS AND DAMAGE. *See also* PILFERAGE.

Bill of lading provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay found not to prohibit payment of meritorious claims seasonably filed with the carier, after the two year and one day period has elapsed, but in that they do not accord the shipper the right to a reasonable period after declination of a claim within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, discriminatory, and unduly prejudicial. Reasonable provision prescribed. Decker & Sons *v.* Director General, 453.

Following *Bills of Lading*, 52 I. C. C., 671, the Commission entertains no doubt of its jurisdiction to construe and pass upon the reasonableness of bill of lading provisions with respect to loss and damage claims. Id. (455).

Contention that section 10 of the uniform bill of lading permits a waiver of any of the terms or conditions of the bill of lading, and that carriers have waived the two year and one day period by having paid certain claims after more than two years and one day had elapsed, although suit had not been instituted, not sustained. Id. (457).

While limitations in bills of lading must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment do not evidence any intent on the part of Congress to erect a statute of limitations barring the payment of seasonably filed claims after any given period. Id. (458).

The right of a carrier to require reasonable notice of claims against it is well recognized. Id. (459–460).

Where a shipper has complied with the carrier's requirements with respect to duly filing a claim, he is entitled to a reasonable period after the declination of the claim within which to institute suit if he so desires. Id. (460).

Defendants may reasonably and properly provide that the period prescribed within which suit shall be instituted after the declination of a claim shall date from the definite declination in writing of the claim. Id. (460).

No ruling ever made by the Commission prohibiting carriers from paying claims seasonably filed, on the ground that shipper permitted two years and one day to elapse without instituting suit. Id. (461).

LOW-GRADE COMMODITY.

Niter cake: Sixth-class rate on, from Carney's Point, N. J., to Norfolk, Va., found unreasonable as compared with lower commodity rates on niter cake and other low-grade commodities between other points. Reasonable rate prescribed and reparation awarded. Du Pont de Nemours & Co. *v.* Director General, 499.

LOW RATES.

If a carrier, due to some compelling force, establishes a lower rate than the Commission could require it to establish, and if such a rate engendered discrimination, the Commission's power to require the discrimination removed operates irrespective of its lack of power to fix the rate. Western Pacific R. R. Co. *v.* S. P. Co., 71 (74).

Class E rates on hay from Minnesota and Wisconsin points to stations in Montana, not shown to have been unreasonable as compared with low rates in the opposite direction established because of emergency in shortage of feed. MacIntyre *v.* C., St. P., M. & O. Ry. Co., 421.

MAIL.

Shipper notified by telephone that destination specified was a prepay station and that charges would have to be paid. Shipment held pending settlement of charges and demurrage accrued. Shipper contends that check was sent the day following notice that charges would have to be prepaid. *Held:* Demurrage legally applicable, and the mere mailing of the check, which was not received, did not satisfy the tariff obligation to prepay charges. Ruddock Orleans Cypress Co. *v.* Director General, 236 (238).

MAILED NOTICE. *See also* NOTICE.

Contention that mere mailing of a reconsignment or diversion order, without regard to its delivery, was in law a compliance with requirements of governing tariffs, by the terms of which, only orders "received" sufficed, not sustained. Wheeler *v.* Director General, 149 (150).

MANUFACTURED ARTICLES.

Differences in value and cubic weights, and the fact that sheet metal is the ground work or base of building sheet-metal work, and in that sense the raw material and the latter the product. *Held:* Sheet-metal work may properly be accorded a higher rating than sheet metal. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (406–407).

MAP.

Sand-producing points. Owens Bottle-Machine Co. *v.* B. & O. R. R. Co., 122 (125).

Norfolk & Portsmouth Belt Line Railroad. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (383).

MARINE INSURANCE.

In original report, 52 I. C. C., 439, 460, carriers required to make effective rates not in excess of the aggregates of intermediate rates when lower than joint through rates from Atlantic seaboard territory to Colorado common points via Galveston, Tex. Joint rates include insurance against marine risks, but ocean factors of the combination rates do not. Original report modified to permit an increase in combination rates by cost of insurance. Public Utilities Commission of Colorado *v.* A., T. & S. F. Ry. Co., 374.

MARKETS.

Memphis, Tenn., is the largest interior cotton market in the country. Memphis-Southwestern Investigation, 515 (546).

MARKING PACKAGES.

On cigarettes in fiber-board boxes, l. c. l., marked with abbreviated descriptions of the contents, without mention of cigarettes, *Held:* Marking insufficient compliance with tariff rule and double first-class rates assessed and classification rule applicable thereto, found justified. Tobacco Products Corp. *v.* Director General, 69.

MASTER CAR BUILDERS' RULES.

Have been controlling in the prescription of the minima on multiple carlot shipments of long poles and piling, or lumber and timber. National Pole Co. *v.* A., T. & S. F. Ry. Co., 625 (629).

MEASURE OF RATE.

The test of reasonableness must be applied by reference to and upon consideration of all the pertinent facts, circumstances, and conditions affecting the rates in effect at the particular time. Southport Mill (Ltd.) *v.* Director General, 154 (161).

Various elements entering into. Id. (162).

MEASURE OF RATE—Continued.

The fact that rates on a certain commodity yield revenue per ton-mile higher than average on all traffic can not be accepted as conclusive evidence of the unreasonableness of such rates. New York Commission of Highways *v.* Director General, 619 (622).

When the rate compared is clearly shown to be less than that which the carrier could reasonably be required to publish, the Commission can not use that subnormal rate as a measure of the reasonableness of the rates on commodities, although they possess similar transportation characteristics. Carnation Milk Products Co. *v.* Director General, 665 (668).

MILEAGE RATES. *See* DISTANCE SCALE.

MILLING IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

MINE RATINGS.

Should be based upon the ability to produce coal, and the commercial capacity to dispose of it. If these elements fluctuate from time to time the rates should periodically be changed. Northern Coal Co. *v.* M. & O. R. R. Co., 502 (510).

MINIMUM CHARGE.

Minimum-charge rule as applied to class rates not applicable to ratings provided in the exception sheet based on a percentage of the class ratings. Boldt Paper Mills *v.* Director General, 331 (332).

MINIMUM WEIGHT.

In General:

Where there is a uniform minimum for all cars of all lengths, the carrier is not required to furnish a car of any specified length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished. Tull & Gibbs *v.* N. & W. Ry. Co., 17 (18).

Is a factor in the carload rate, and in connection with the rate determines the carload earnings. Timmons *v.* B., C. & A. Ry. Co., 495.

Cooperage stock: Contention that rates and minima on, from certain eastern defined territory to California terminals and other western points is unreasonable and unduly prejudicial due to maintenance of lower rates and minima in the reverse direction, not sustained. Associated Cooperage Industries *v.* Director General, 327 (330).

Iron, scrap: Same minimum, but lower rate, applied from a farther distant point, thereby creating a departure from the fourth section which defendant apparently removed by reducing the rate and increasing the minimum from the intermediate point. Departure, however, still exists when the minima are considered in connection with the rates, and no justification therefor shown. Karchmer Iron & Metal Co. *v.* Director General, 730 (731).

Shutters, iron and steel: Present minimum of 36,000 pounds, in official classification found unreasonable to extent it exceeds 30,000 pounds formerly in effect. Dahlstrom Metallic Door Co. *v.* E. R. R. Co. 402 (413).

Strawberries:

Minimum of 15,000 pounds on, from Delaware, Maryland, and Virginia to points in New England, found not unreasonable in that it compares favorably with the minimum on like traffic in other territories and on other perishable fruit, but unduly prejudicial in favor of Philadelphia and Pittsburgh, Pa., and New York, N. Y., to which points minimum of 12,000 pounds applied. Timmons *v.* B., C. & A. Ry. Co., 495.

MINIMUM WEIGHT—Continued.
Strawberries—Continued.
The fact that some shipments do not arrive in good condition is an insufficient reason for reducing the minimum. Id. (498).
Wheat: Tariff rule in connection with a rate on, providing that when a car of less than 80,000 pounds was furnished for carrier's convenience, the marked capacity of the car used, but not less than 60,000 pounds, would govern, found unreasonable. Reparation awarded and reasonable rule prescribed. Northern Grain & Warehouse Co. *v.* O. T. Ry. Co., 101; Northern Grain & Warehouse Co. *v.* Director General, 488.
MISQUOTATION OF RATE. *See also* ERROR.
Or tariff provision which affects the application of a rate or charge, is not sufficient basis for an award of reparation. Sellen *v.* L. V. R. R. Co., 117 (119); United Shoe Machinery Co. *v.* B. & M. R. R. Co., 206 (208); Helena Traffic Bureau *v.* Director General, 708 (709).
MISROUTING.
On soda ash from Barberton, Ohio, to Shinglehouse, Pa., rate of 11.6 cents and route specified. Agent advised that route embargoed and destination changed by agent to Ceres, N. Y., notify "Puritan Glass Co., Shinglehouse, Pa." Shipment moved through Ceres to Shinglehouse and rate of 16.6 cents assessed. *Held:* Shipment misrouted, as rate of 11.6 cents applied over another route through Ceres to Shinglehouse. Reparation awarded. Gross *v.* Director General, 37.
Shipments of wheat from Shickley and Dorchester, Nebr., to Chicago, Ill., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak., moving via Sioux City, Iowa, misrouted by carrier's agent. Reparation awarded to extent charges exceeded those applicable by way of Omaha. Marfield Grain Co. *v.* Director General, 39.
Certain shipments of molding sand found misrouted as lower rate, consistent with complainant's routing instructions, applied via a route other than route of movement. Reparation awarded. Beaumont Chamber of Commerce *v.* Director General, 110 (111).
Combination rate legally applicable on old rails and fastenings not shown unreasonable, but shipments found misrouted and overcharged, as no joint rate in effect and the lowest combination of rates applicable under rule 5 (b) of Tariff Circular 18–A applied. Reparation awarded. Zelnicker Supply Co. *v.* Director General, 137.
Shipments tendered unrouted and carrier forwarded via an interstate route. Lower rate in effect via an intrastate route. *Held:* Shipments misrouted. Reparation awarded. Fort Smith Commission Co. *v.* Director General, 234.
On soda ash specifically routed by shipper, no joint through rate in effect. Combination rate assessed not shown unreasonable but shipments found misrouted, as lower combination rate applied, consistent with complainant's routing instructions, via route other than route of movement. Reparation awarded. Du Pont de Nemours & Co. *v.* C. R. R. Co. of N. J., 243.
When shipper's routing instructions incomplete, but consistent with the cheapest available and reasonable route, carrier must send shipment by that route or answer in damages for misrouting. Id. (244).
On two tank-car loads of silicate of soda, no junction point named in billing, and cars forwarded via junction taking higher rate. *Held:* Misrouting and reparation awarded. Boldt Paper Mills *v.* Director General, 331 (332).

MISROUTING—Continued.

Affidavit introduced by complainant that agent was instructed but refused to route shipment via lower rated route. Affidavit also introduced by carrier's agent that consignor instructed shipment be given to carrier furnishing cars first, and so routed the shipments. *Held:* Misrouting not established. Zelnicker Supply Co. *v.* M. P. R. R. Corp., 715.

MISSISSIPPI RIVER.

Boat lines in operation upon. Memphis-Southwestern Investigation, 515 (565).

MISSISSIPPI RIVER CROSSINGS. *See also* RIVER CROSSINGS.

Rates from Memphis, Tenn., may appropriately be somewhat higher than the Arkansas intrastate rates because of the additional service involved in crossing the Mississippi River. Memphis-Southwestern Investigation, 515 (540).

To depart from previous usage and permit no allowance for a Mississippi Bridge or river crossing where the instrumentalities involve special investment or service would be out of line with the Commission's action upon numerous rate schedules heretofore approved, and out of keeping with similar rate adjustments instituted by the carriers. Id. (540).

Reasonable maximum bridge tolls for the Mississippi River crossing at Memphis, Tenn., prescribed. Id. (541, 573).

MISTAKE. *See* ERROR; MISQUOTATION OF RATE.

MIXED CARLOAD.

Charges legally applicable on rags and scrap rubber from Denver, Colo., to Chicago, Ill., and on junk and scrap metals, including scrap copper, brass, and aluminum, from Denver, Colo., and Cheyenne, Wyo., to Chicago, and from Loveland, Colo., to St. Louis, Mo., in mixed carloads, found unreasonable to extent they exceeded rates prescribed in *Radinsky Case*, Unrep., 2174. Reparation awarded. Radinsky *v.* C., B. & Q. R. R. Co., 199.

Rates on scrap copper, brass, rags, and junk, in mixed carloads, from Trinidad, Pueblo, and Denver, Colo., to Chicago, Ill., found unreasonable to extent they exceeded rates prescribed in *Radinsky Case*, 55 I. C. C., 199. Reparation awarded. Radinsky *v.* C. & N. W. Ry. Co., 203.

Official classification ratings on leatherboard not shown unreasonable, but rating on scrap leather and scrap leatherboard, in straight or mixed carloads, of a declared or agreed value not exceeding 3.5 cents per pound, found unreasonable to extent it exceeds sixth-class, minimum 30,000 pounds. Reparation awarded. Atlas Leather Mfg. Co. *v.* P., C., C. & St. L. R. R. Co., 394.

Official classification rule applicable to, and resulting charges on, mixed carloads of building sheet-metal work, not shown to be unreasonable. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (415).

Rates on fresh meats, in mixed carloads with packing-house products, found unreasonable to extent they exceed rates on the basis of the distance scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160. Reasonable rate prescribed and reparation awarded. Sulzberger & Sons Co. *v.* C., R. I. & P. Ry. Co., 691.

Absence of mixed carload rates on O'Cedar polish, mops, and mop handles not found unreasonable in the past, but for the future rates on mixed carloads, shipped in one day to one consignor to one consignee to one destination, will be unreasonable to extent they exceed charges at the highest rate and minimum applicable on a straight carload of any article in the shipment. Portland Traffic & Transportation Asso. *v.* B. & M. R. R., 733 (740).

MIXED CARLOAD—Continued.

Combination rate on mixed carload of oranges and lemons from Lindsay, Calif., to Sidney, Mont., found unreasonable to extent it exceeded lower commodity rate to other points in the same general territory. Reparation awarded. Gamble Robinson Co. *v.* N. P. Ry. Co., 749.

MIXED SHIPMENT.

Window frames and sash combined, iron and steel: Rating on, in official classification, l. c. l., in boxes or crates, should not exceed second class, and in packages, c. l., fifth class, minimum 24,000 pounds, subject to rule 27. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (410–411).

MODIFICATION. *See also* REHEARING; SUPPLEMENTAL REPORT.

Upon further hearing increased rates on shipments between points on the Lake Terminal and interstate points, resulting from nonabsorption of charges of the Lake Terminal, found unreasonable and unduly prejudicial to extent they exceeded rates to and from points in the Cleveland–Lorain district. Reparation awarded. National Tube Co. *v* L. T. R. R. Co., 469 (481–482).

MONOPOLY.

By according Peoria relief asked, it would secure a virtual monopoly of the grain from adjacent territory, now bought in competition with Chicago. Such a result the Commission has deprecated in other cases. Peoria Board of Trade *v.* A., T. & S. F. Ry. Co., 42 (49).

MOOT QUESTION.

Subsequent to filing of complaint, line via which rates attacked applied was sold and abandoned, and the joint interstate class rates, not applicable via any other route, were canceled. *Held:* Rate situation attacked no longer exists and the Commission can make no order for the future. Fitz. *v.* N.-C.-O. Ry., 398.

MULTIPLE CAR LOT. *See* TWO CARS.

NEW YORK-CHICAGO RATES.

Class rates between points in trunk line territory and Carrollton, Ky., based upon the Cincinnati combinations, not shown unduly prejudicial to Carrollton of Madison, Ohio, and other Ohio River cities, to which rates are made with relation to the New York-Chicago rates. Commercial Club of Carrollton, Ky. *v.* Director General, 697.

Class rates between points in c. f. a. and trunk line territories are made upon established percentages of the New York-Chicago rates. Id. (699).

NEWBURGH & SOUTH SHORE RAILWAY COMPANY.

Found to be a common carrier subject to the act, which may lawfully receive from its trunk-line connections, under appropriate tariffs, reasonable divisions of joint rates or absorptions of switching charges. American Steel & Wire Co. *v.* N. & S. S. Ry. Co., 353.

History of. Id. (353–354).

NOTATIONS AND SYMBOLS.

Notation on tariff, in accord with rule 77, held to be "a substantial compliance with the requirements of the fourth section." Du Pont De Nemours & Co. *v.* Director General, 247 (248).

NOTICE. *See also* MAILED NOTICE.

The right of a carrier to require reasonable notice of claims against it is well recognized. Decker & Sons *v.* Director General, 453 (459–460).

OCEAN-AND-RAIL. *See also* RAIL-AND-WATER; WATER-AND-RAIL.

In original report, 52 I. C. C., 439, 460, carriers required to make effective rates not in excess of the aggregates of intermediate rates when lower than joint through rates from Atlantic seaboard territory to Colorado common points via Galveston, Tex. Joint rates include insurance against marine risks, but ocean factors of the combination rates do not. Original report modified to permit an increase in combination rates by cost of insurance. Public Utilities Commission of Colorado *v.* A., T. & S. F. Ry. Co., 374.

OHIO RIVER.

Difference in density of population, volume of traffic, and other conditions affecting railroads operating in southern territory and in c. f. a. and trunk line territories are sufficient to warrant higher rates south of the Ohio River than north thereof. Commercial Club of Carrollton, Ky. *v.* Director General, 697 (700).

OPPOSITE DIRECTION. *See* BOTH DIRECTIONS.

ORDER OF COMMISSION.

Defendants not desiring relief for the future, order of Commission granting authority to establish rates on evaporated skimmed milk containing vegetable fat, from Oconomowoc and Jefferson, Wis., to Lake Charles, La., which are lower than on like traffic to De Ridder, La., and other intermediate points, vacated. Hebe Co. *v.* Director General, 214 (217).

OVERCHARGES.

Charges exceeded those legally applicable. Reparation awarded. Illinois Glass Co. *v.* St. L.-S. F. Ry. Co., 8.

Combination rate legally applicable on old rails and fastenings, not shown unreasonable, but shipments found misrouted and overcharged as no joint rate in effect and the lowest combination of rates applicable under rule 5 (b) of Tariff Circular 18–A, applied. Reparation awarded. Zelnicker Supply Co. *v.* Director General, 137.

Shipment found to have been overcharged where minimum-charge rule applicable to class rates applied to ratings provided in the exception sheet based on a percentage of class ratings. Boldt Paper Mills *v.* Director General, 331 (332).

PACKING. *See also* CONTAINERS.

Door and window frames, iron and steel: Requirement in official classification for shipment of, in boxes or crates, found reasonable. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (411).

Window frames and sash combined, iron and steel: Requirement in official classification for shipment of, in boxes or crates not found unreasonable. Id. (411.)

PARTIES.

The law requires that the tariff shall name just and reasonable rates and charges which shall be collected by the carrier, but does not specify which of the parties to the transportation shall pay them. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).

Complaint seeking order for the future requiring establishment of refrigerator express rates on strawberries, such shipments to be carried in passenger trains or trains making passenger-train time, dismissed as Director General not made a party defendant, although opportunity for such action afforded. Campbell *v.* Southern Exp. Co., 633.

Complainant not a party to the transportation records but shipments were made for its account and it is the real party in interest and entitled to any reparation which may be awarded. Sunland Oil Co. *v.* Director General, 753 (754).

PASSENGER FARES.

A lower basis of divisions of joint through passenger fares between points in California and Salt Lake City, Utah, and points north and east thereof, accorded complainant, than defendants allow each other of similar joint fares, found to be unlawful in violation of the second paragraph of section 3 of the act. Reparation awarded. Western Pacific R. R. Co. *v.* S. P. Co., 71 (83).

PERCENTAGE RATES. *See also* CLASS RATES.

Considering the widespread prevalence of the Shreveport class percentages south of the region here involved, and the desirability of uniform class percentages in the distance scales in the entire region, the Shreveport percentages prescribed herein. Memphis-Southwestern Investigation, 515 (535–538).

Class and commodity rates from New Orleans, La., to interior points in Oklahoma and eastern Kansas, under present conditions, found unduly prejudicial to those points of Kansas City, Mo., to extent they are in excess of the percentages of the corresponding rates from New Orleans to Kansas City prescribed herein. Id. (571, 577).

PILFERAGE. *See also* LOSS AND DAMAGE.

Shipments of cigarettes are especially liable to loss from theft. Tobacco Products Corp. *v.* Director General, 69 (70).

PLEADING AND PRACTICE.

Contention that no reparation should be awarded based upon decision in 35 I. C. C., 109, because it was not prayed for in that proceeding as required by the Commission's Rules of Practice, is not well founded. Cape Girardeau Portland Cement Co. *v.* St. L. & S. F. R. R. Co., 315 (316).

Complaint seeking order for the future requiring establishment of refrigerator express rates on strawberries, such shipments to be carried in passenger trains or trains making passenger-train time, dismissed as Director General not made a party defendant, although opportunity for such action afforded. Campbell *v.* Southern Exp. Co., 633.

PORT-TO-PORT RATES.

Rates in effect since June 25, 1918, on eyelets from New Bedford, Mass., to Pier 40, New York, N. Y., moving all-water, not shown unreasonable as compared with all-rail and rail-and-water rates from other Massachusetts and Connecticut points to same destination. New Bedford Board of Commerce *v.* Director General, 274.

Filed prior to those filed by the Director General, not subject to the Commission's jurisdiction. Id. (275).

POTENTIAL COMPETITION. *See* COMPETITION.

POWER OF COMMISSION. *See* JURISDICTION.

PREFERENCES AND PREJUDICES. *See also* DISCRIMINATION; SECTION 3.

In General:

Minor disadvantages to one point or another incident to group adjustments have under the circumstances of some cases been held not to constitute undue prejudice made unlawful by section 3. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (144).

The fact that correction of rates that are unduly prejudicial will or may require reductions or corrections as to other commodities can not be accepted as a valid defense. Watertown Sash & Door Co. *v.* Director General, 186 (193).

PREFERENCES AND PREJUDICES—Continued.
In General—Continued.
Under section 3 of the act, to be undue and unlawful, must ordinarily be such that it is a source of advantage to the party alleged to be favored, and a disadvantage to the other party, and a competitive relation between the parties must generally appear. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (380).
Articles:
Flour and meal in rope-paper sacks: Rules and regulations of the southern classification, prohibiting the transportation of, found unduly prejudicial as compared with various other commodities moving in paper containers. Rope Paper Sack Bureau *v.* Director General, 209 (212–213).
Milk, canned: Rates in effect between July 21, 1915, and July 19, 1916, on canned milk (condensed) from condensing plants in the state of Washington to various interstate points not shown unreasonable or unduly prejudicial as compared with rates on other canned goods taking lower rates because of competitive conditions. Carnation Milk Products Co. *v.* Director General, 665.
Wall-board: Carload ratings on, found unreasonable and unduly prejudicial to extent they exceeded rates on wood-pulp board. Original report in 49 I. C. C., 91, in which ratings on "wall board" found legally applicable on "Cornell wall board," adhered to. Reparation awarded. Cornell Wood Products Co. *v.* A., T. & S. F. Ry. Co., 257.
Car distribution: Allegation that complainant's stripping coal mine was subjected to undue prejudice in favor of neighboring shaft mines, in allotting coal cars during a period of car shortage, *Held:* Not shown possible for complainant to have loaded more cars than furnished, notwithstanding the fact that it received a relatively less percentage of its pro rata than the shaft mines. Northern Coal Co. *v.* M. & O. R. R. Co., 502.
Car furnishing: Practice with respect to furnishing coal cars to complainant, located on a branch line of, and served singly by, the L. & N., not shown unduly preferential of a neighboring competing mine, located on the same branch line, and served under a joint trackage arrangement by both the L. & N. and C., C., C. & St. L. railways. Gallatin Coal & Coke Co. *v.* L. & N. R. R. Co., 491.
Carload and less than carload: On machinery and parts, l. c. l., shipment loaded by initial carrier but unloaded by consignee. *Held:* Absence of a rule providing for application of the c. l. rate, plus a charge for loading, under which lower charges would result, not shown unreasonable or unduly prejudicial. Roberts & Schaefer Co. *v.* Director General, 277.
Competitive and noncompetitive traffic: Refusal of defendants to absorb belt line switching charges on shipments of lumber and other forest products at Norfolk, Va., when destined to industries on the lines of carriers other than the belt line, while absorbing the belt line switching charges on similar shipments when originating at competitive points, not found to result in undue prejudice. Portsmouth Asso. of Commerce (Inc.) *v.* S. A. L. Ry. Co., 377 (380, 391).
Damages: Commission can award reparation for damages resulting from unduly prejudicial rates only where the evidence as to fact and amount would be sufficient to sustain a recovery in court. Inman-Poulsen Lumber Co. *v.* S. P. Co., 357 (362).

PREFERENCES AND PREJUDICES—Continued.
Localities:
Arkansas points:
Class rates from St. Louis, Mo., to jobbing points in southern Arkansas found unreasonable and unduly prejudicial of Pine Bluff and Little Rock, Ark., to extent they exceed the corresponding rates to Pine Bluff and Little Rock for like distances. Memphis-Southwestern Investigation, 515 (551, 575).
Class and commodity rates from defined territories in the southeast to points in Arkansas found unduly prejudicial to points in Arkansas of points in Oklahoma to extent they exceed the corresponding rates from the defined territories to Oklahoma points. Id. (557, 576).
Beaumont, Tex.: Following *Orange Rice Mill Co.*, 49 I. C. C., 250, rate on clean rice from, to New Orleans, La., not found unreasonable, but found unduly prejudicial to extent it exceeds by more than 5 cents the rate on like interstate traffic from Lake Charles, La., to same destination. Reparation denied. Beaumont Chamber of Commerce *v.* Director General, 428.
Buffalo, N. Y.: Practice of the D., L. & W. and L. V., and of the B., R. & P. prior to March 5, 1918, of refusing to absorb switching charges of the Erie R. R. at Buffalo, N. Y., on transit grain and grain products to the same extent that they absorb those of the N. Y. C. and Buffalo Creek railroads, found unduly prejudicial to complainant. Reparation denied. Globe Elevator Co. *v.* Director General, 587.
Carrollton, Ky.: Class rates between points in trunk line territory and Carrollton, based upon the Cincinnati combinations, not shown unduly preferential of Madison, Ohio, and other Ohio River cities to which rates are made with relation to the New York-Chicago rates. Commercial Club of Carrollton, Ky. *v.* Director General, 697.
Chicago, Ill.: Export rate on iron and steel articles from, to Pacific coast ports not found unduly prejudicial to Chicago of Pittsburgh, Pa., as Pittsburgh, due to its location nearer the Atlantic seaboard, would still have the benefit of the route through Atlantic ports at lower rates. Inland Steel Co. *v.* Director General, 462.
Dewey, Okla.: Rate on slack coal from mines on the M. P. and Frisco in the Pittsburg district to Dewey, in connection with the M., K. & T., found unduly prejudicial to extent it exceeded by more than 10 cents per ton the rate maintained by the M. P. and Frisco from same mines to points in the Kansas gas belt. Reparation denied. Dewey Portland Cement Co. *v.* A., T. & S. F. Ry. Co., 1 (4–6).
Eastern defined territory: Contention that rates and minima on cooperage stock from certain points in, to California terminals and other western points is unreasonable and unduly prejudicial due to lower rates and minima in the reverse direction, not sustained. Associated Cooperage Industries *v.* Director General, 327 (330).
Fenn, Ark.: Rate on imported nitrate of soda from New Orleans, La., and Pensacola, Fla., to, found unduly prejudicial as compared with rates from the same points of origin to Joplin, Carl Junction, and Atlas, Mo., and Turck and Pittsburg, Kans. Equitable Powder Mfg. Co. *v.* Director General, 24 (27).

PREFERENCES AND PREJUDICES—Continued.
Localities—Continued.
Fort Smith, Ark.: Allegation that class rates from points in western trunk line territory to Fort Smith are unduly prejudicial to that point and unduly preferential of points in eastern Oklahoma, not sustained. Memphis-Southwestern Investigation, 515 (556, 566).
Holmes, Mo.: Import rate on nitrate of soda from Pensacola, Fla., and New Orleans, La., to Holmes and Joplin, Mo., were the same. Subsequently the rate to Joplin was reduced but not to Holmes. *Held:* Rate to Holmes not shown unreasonable but found unduly prejudicial to extent it exceeds the rate to points within the Joplin group. Reparation denied. Excelsior Powder Mfg. Co. *v.* Director General, 725.
Illinois: Commodity rates in Illinois district shown to be unduly prejudicial against Indiana, but the same can not be said with respect to the general commodity rate structure throughout this district. Recommendations made to deal with existing discriminations. Illinois Classification, 290 (312).
Kalamazoo, Mich.: In original report, 53 I. C. C., 344, rates on printing, book, and wrapping paper from Kalamazoo and other Michigan mills to eastern trunk line territory found unduly prejudicial of Virginia points, which carriers attempted to remove by submission of an emergency basis of rates. *Held:* Commission can not approve adjustment submitted by the carriers, even as an emergency measure and undue prejudice found to exist required to be removed. Michigan Paper Mills Traffic Asso. *v.* N. Y. C. R. R. Co., 679.
Kansas and Oklahoma points: Class and commodity rates from New Orleans, La., to interior points in Oklahoma and eastern Kansas, under present conditions, found unduly prejudicial to those points of Kansas City, Mo., to extent they are in excess of the percentages of the corresponding rates from New Orleans to Kansas City, prescribed herein. Memphis-Southwestern Investigation, 515 (571, 577).
Kansas City, Mo.: Commodity rates on scrap iron or steel from Kansas and Nebraska points to Colorado common points found unduly prejudicial to Kansas City to extent they are less than 7 cents lower to Kansas City than to Colorado common points. Kansas City Bolt & Nut Co. *v.* A., T. & S. F. Ry. Co., 441.
Kassel, La.: Demurrage charges on petroleum products, in tank-car loads, shipped to, for export, accruing because steamers were diverted to other ports on account of war requirements, found unreasonable and unduly prejudicial to extent they exceeded those which would have accrued under 10 days' free-time rule in effect at New Orleans and other Louisiana ports. Reparation awarded. New Orleans Refining Co. *v.* L. Ry. & Nav. Co., 131.
Kickapoo, Ind.: Rates on sand and gravel from, to Chicago, Ill., and points in the Chicago switching district, found unreasonable and unduly prejudicial to extent they exceed, for local delivery, the rates from Ginger Hill, Ill., and by more than 5 cents the rates from Algonquin, Ill., and other inner-zone points; and for joint and belt line deliveries, rates which shall not exceed 70 cents per ton. Reparation awarded. Kickapoo Sand & Gravel Co. *v.* Director General, 657.

PREFERENCES AND PREJUDICES—Continued.
Localities—Continued.
Lake Terminal Ry. points: Upon further hearing, increased rates on shipments between points on the Lake Terminal and interstate points, resulting from nonabsorption of charges of the Lake Terminal found unreasonable and unduly prejudicial to extent they exceeded rates to and from points in the Cleveland-Lorain district. Reparation awarded. National Tube Co. *v.* L. T. R. R. Co., 469 (481–482).
Little Rock, Ark.: Rates on knitting-factory products from producing points in Tennessee, Georgia, and Alabama, to, not found unreasonable or unduly prejudicial as compared with rates to Memphis, Tenn. Merchants Freight Bureau of Little Rock, Ark. *v.* A. C. L. R. R. Co., 119.
Memphis, Tenn.:
Existing class rates between Memphis and all points on class A railroads in Arkansas are unreasonable and unduly prejudicial to Memphis, to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding class rates applicable for like distances to intrastate traffic in Arkansas. Memphis-Southwestern Investigation, 515 (541, 573–574).
Existing class rates from, to points in southern Missouri found unreasonable and unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding class rates in effect from St. Louis, Mo., to same points for like distances. Id. (544, 574).
Class rates from, to points in Arkansas found unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding rates for like distances from St. Louis, Mo., to same destinations. Id. (546, 574).
Rates and practices of the M. P. governing the concentration of Arkansas cotton at Memphis, not shown unduly prejudicial to Memphis or otherwise unlawful, but a uniform basis of constructing the rates should be devised. Id. (548, 574–575).
Practice of the M. P. and of the Cotton Belt, in imposing a greater charge for delivery of cotton at compresses located on the Union Ry. in Memphis, than the corresponding charge for delivery at East St. Louis, Ill., found to subject Memphis to undue disadvantage. Id. (550, 575).
Mobile, Ala.: Through rates on fertilizer from, to stations on the S. P. in Louisiana found unreasonable and unduly prejudicial of New Orleans, La., to extent they exceeded the intrastate rates from New Orleans to same destinations by more than the rates from Mobile to New Orleans. Reparation awarded. Virginia-Carolina Chemical Co. *v.* Director General, 583.
Monroe and Shreveport, La.: Class rates from, to points on class A railroads in southern Arkansas found unreasonable and unduly prejudicial to Monroe and Shreveport, of competing points in Arkansas to extent they exceed for like distances the corresponding class rates herein prescribed, applicable to intrastate traffic in Arkansas. Memphis-Southwestern Investigation, 515 (555, 575–576).

PREFERENCES AND PREJUDICES—Continued.
Localities—Continued.
Montgomery, Ala.: Rates on iron and steel articles, l. c. l., from Louisville, Ky., Cincinnati, Ohio, Evansville, Ind., St. Louis, Mo., East St. Louis and Belleville, Ill., and points based thereon, to, found unduly prejudicial to extent they exceed the rates to Catoma, Ala. Montgomery Chamber of Commerce *v.* Director General, 688.
Natchez, Miss.:
Class rates from, for distances not in excess of 350 miles to points In Arkansas found unduly prejudicial to Natchez of Little Rock, Ark., and of intrastate traffic in Arkansas, to extent they exceed by more than reasonable charges for the river crossing, prescribed herein, the corresponding class rates from Little Rock to same destinations for like distances. Memphis-Southwestern Investigation, 515 (533, 575).
Class rates from, to points in Arkansas found unduly prejudicial to Natchez of Memphis, Tenn., to extent they exceed by more than the difference in the crossing charges at Memphis and Natchez, prescribed herein, the corresponding rates from Memphis to same destinations for like distances. Id. (533, 575.)
New England points: Minimum weight of 15,000 pounds on strawberries from Delaware, Maryland, and Virginia, to points in New England, found unduly prejudicial in favor of Philadelphia and Pittsburgh, Pa., and New York, N. Y., to which points minimum of 12,000 pounds applied. Reparation denied. Timmons *v.* B., C. & A. Ry. Co., 495.
Okmulgee, Okla.: Rate on window glass from Fredonia, Kans., to, found unreasonable and unduly prejudicial to extent it exceeds the rate from same point to Muskogee, Okla. Relationship of rates prescribed and reparation awarded. Curtis, Booth & Bentley Co. *v.* Director General, 511.
Peoria, Ill.: Adjustment of joint rates on grain from points in Illinois via Peoria, to points in eastern trunk line territory not found unduly prejudicial to Peoria in favor of competing markets. Peoria Board of Trade v. A., T. & S. F. Ry. Co., 42 (50).
Pikeview, Colo.: Combination rates on Roswell, Colo., on lignite coal from Pikeview, a branch-line point, to interstate points on the C., R. I. & P. Ry., not shown unreasonable, but found unduly prejudicial to extent they exceed by more than 10 cents the rates from the Keystone mine, a branch-line point near Roswell, to same destinations. Pikes Peak Consolidated Fuel Co. *v.* Director General, 249.
Plasterco, Tex.: Combination rate legally applicable on finishing plaster from Acme, Tex., to, via Altus, Okla., found unduly prejudicial to extent it exceeded the rates from Okeene, Ideal, or Southard, Okla., to Plasterco. Reasonable rate prescribed and reparation awarded. Acme Cement Plaster Co. *v.* Director General, 179.
Portland, Oreg.: Rates on fir and hemlock lumber, mining timber, mine wedges, fence posts, and ties, in straight or mixed carloads, from, to points on the S. P. south and east of San Francisco and bay points, and to points on the A., T. & S. F. east of Mojave, Calif., found unduly prejudicial to extent they exceeded rates from Willamette Valley points to same destinations. Inman-Poulsen Lumber Co. *v.* S. P. Co., 357 (361).

PREFERENCES AND PREJUDICES—Continued.
Localities—Continued.
Sheboygan, Wis.: Class rates from, to points in Illinois south of the T., P. & W. Ry., also to St. Louis, Hannibal, and Louisiana, Mo., and Keokuk, Iowa, not found unreasonable *per se* but unduly prejudicial to Sheboygan, to extent that they exceeded rates from Milwaukee by more than the arbitraries stated in the report. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (145).
Southern classification territory: Ratings in, on flavoring extracts, in glass bottles packed in wooden cases, and in bulk in wooden barrels, not found unduly prejudicial as compared with ratings in western and official classifications. Sauer Co. *v.* A. & V. Ry. Co., 11 (14).
Tennessee points: Present adjustment of rates, under which through rates to Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., are generally made up of the rates to and from Nashville, Tenn., found unduly prejudicial to such points to extent that through rates exceed the rates to Nashville plus 75 per cent of the local rates from that point. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (656).
Watertown, S. Dak.: Rates on glass from producing points in Kansas to points in South Dakota found unduly prejudicial to extent they exceed rates based upon the commodity rates to Sioux City, Iowa, Sioux Falls, S. Dak., or Pipestone, Minn., plus 75 per cent of the fifth-class rates thence to destinations. Watertown Sash & Door Co. *v.* Director General, 186 (193).
Trackage arrangements: Carriers may not extend preferential treatment through, to one shipper to the prejudice of another, or continue such an arrangement if it develops into an undue advantage to a favored shipper. Gallatin Coal & Coke Co. *v.* L. & N. R. R. Co., 491 (493).
PREPAYMENT.
Shipper notified by telephone that destination specified was a prepay station and that charges would have to be paid. Shipment held pending settlement of charges and demurrage accrued. Shipper contends that check was sent the day following such notice. *Held:* Demurrage legally applicable, and the mere mailing of the check, which was not received, did not satisfy the tariff obligation to prepay charges. Ruddock Orleans Cypress Co. *v.* Director General, 236 (238).
PRICE.
The price of iron and steel articles generally in the Chicago market is based on the Pittsburgh price plus the rates from Pittsburgh. Inland Steel Co. *v.* Director General, 462 (466).
PRIVATE TRACKS.
Although reasonably practicable, since complainant has not provided a private track with which connection could be made, complainant not entitled to an order requiring a switch connection with a proposed private track from its mine to the line of the N. & W. at Mathi's spur, Quaker, W. Va. Virginia Coal & Fuel Co. *v.* N. & W. Ry. Co., 61.
Car of coal placed on private sidetrack March 16, 1917, and unloaded same day. Sidetrack extended in part over tract not owned by complainant and due to delays in the purchase thereof notice served upon defendant

PRIVATE TRACKS—Continued.
that legal proceedings would be instituted if rolling stock should be moved over this sidetrack. Defendant did not remove car until March 20. *Held:* As tariff provided that "a car held for unloading is considered released when lading removed," and car was not held for or by complainant after March 16, demurrage unauthorized. Reparation awarded. Holland Aniline Co. *v.* P. M. Ry. Co., 617.

PROFIT.
Regardless of the fact that complainant could have secured a lower rate had it routed its shipment via another route, it can not be urged that complainant should be required to suffer a loss resulting from an unreasonable exaction on the part of the defendants, and that the latter should be permitted to retain their excessive profits. Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (677–678).
The fact that a competitor made, or had an opportunity to make, a larger margin of profit by a rate less than a maximum reasonable rate is no proof that the competitor's rate caused damages for which reparation may be awarded. Park *v.* L. & N. R. R. Co., 703 (707).

PROPORTIONAL RATE. *See also* COMBINATION RATES; FACTOR.
On lumber from Bolton, N. C., to Norfolk and Pinners Point, Va., and points north thereof, found unreasonable to extent it exceeded the aggregate of intermediate rates in effect over route of movement via Drum Hill, N. C. Reparation awarded. Waccamaw Lumber Co. *v.* A. C. L. R. R. Co., 595.
On railway fuel and commercial coal, each factor of the proportional rates was increased 15 cents. *Held:* Double increase not justified and unreasonable, as permission under which allowed, construed as authorizing an increase in the through rate, whether maintained as joint or combination, of not more than 15 cents. Reparation awarded. Mississippi River & Bonne Terre Ry. *v.* Director General, 674.

RAIL-AND-WATER. *See also* OCEAN-AND-RAIL; WATER-AND-RAIL.
Rates on eyelets from New Bedford, Mass., to Pier 40, New York, N. Y., moving all-water, not shown unreasonable as compared with all-rail and rail-and-water rates from other Massachusetts and Connecticut points to same destination. New Bedford Board of Commerce *v.* Director General, 274.

RAIL-WATER-AND-RAIL. *See* WATER AND RAIL.

RATE COMPARISONS.
Table showing to what extent the Shreveport scale would change the class rates from St. Louis, Mo., and Memphis, Tenn., to typical stations in Arkansas. Memphis-Southwestern Investigation, 515 (525, 526).
Table showing comparison of Arkansas, Oklahoma, and Missouri intrastate rates and jobbers' and Shreveport scales, in effect prior to the 25 per cent increase, for distances ranging from 50 to 185 miles. Id. (526–527).
Table showing how the Shreveport scale percentages compare with those observed in the west and southwest generally. Id. (536).
Table comparing Arkansas intrastate class rates with interstate class rates from Memphis, Tenn., to Arkansas points, for like distances. Id. (539).
Table comparing the interstate class rates from Monroe, La., to certain Arkansas points with Arkansas intrastate rates. Id. (554).
Rates on representative commodities from New Orleans, La., to Kansas City, Mo., compared with corresponding rates to intermediate points in Kansas. Id. (571).

RATE COMPARISONS—Continued.

Mere citation of rates for comparable distances without a showing of the conditions under which such rates were established, volume of movement thereunder or similarity of transportation circumstances and conditions, are not very helpful. New York Commission of Highways *v.* Director General, 619 (623).

RATES.

The expression of rates and charges in the form of divisions makes them none the less rates and charges which may be discriminatory. Western Pacific R. R. Co. *v.* S. P. Co., 71 (73).

REASONABLENESS OF RATE. *See* MEASURE OF RATE.

RECIPROCITY.

Carriers having elected to join in through routes and joint fares can not be heard to say that possibilities of reciprocity as between themselves and smaller possibilities of reciprocity as between each of them and complainant justify the discrimination complained of. Western Pacific R. R. Co. *v.* S. P. Co., 71 (81).

RECONSIGNMENT.

Reconsignment and demurrage charges found legally applicable and not unreasonable, as mailing of reconsignment order, without regard to its delivery, was not in law a compliance with requirements of governing tariffs, by the terms of which only orders "received" sufficed. Wheeler *v.* Director General, 149.

On lumber, originally consigned to Chattanooga, Tenn., instructions mailed and telegraphed to defendant's agents at Nashville and Chattanooga for reconsignment to Philipsburg, Pa. Due to error in transmission of telegram defendant diverted shipment to West Philadelphia, Pa., where demurrage accrued. Shipment ultimately forwarded to Philipsburg. *Held:* Detention at Philadelphia due to railroad error and no demurrage lawfully accrued at that point. Reparation awarded. Southern Lumber & Mfg. Co. *v.* C. of G. Ry. Co., 225.

Certain shipments of scrap iron refused and held more than 72 hours before reconsignment, and others partially unloaded and forwarded at reduced weights to final destination. *Held:* Shipments not entitled to joint through rates, and combination rates charged not found unreasonable. Kaufman & Sons Co. *v.* C. R. R. Co. of N. J., 268.

One of the conditions precedent to a reconsignment privilege is that contents of car should remain unchanged. Id. (270).

Delivery refused because reconsignment point embargoed and demurrage accrued. *Held:* Demurrage illegal, as tariff made no restriction against reconsignment to embargoed points, or for detention charges on shipments so reconsigned. Reparation awarded. Ferguson Lumber Co. *v.* Director General, 335.

Combination of rates to and from reconsigning points plus reconsignment charges found unreasonable to extent they exceeded joint through rates plus charges for reconsignment, subsequently established. Reparation awarded. Bennett Grain Co. *v.* Director General, 744.

Following *Kern & Sons*, 40 I. C. C., 552, and *Reconsignment Case*, 47 I. C. C., 590, combination rate plus reconsignment charge found unreasonable to extent they exceeded joint through rate plus reconsignment charge in effect via another route and subsequently established via route of movement. Reparation awarded. Lowry Lumber Co. *v.* Director General, 751.

REDUCTION IN RATES.

By Carriers:

Rate on glass soda bottles from Okmulgee, Okla., to Thibodaux, La., exceeded rate subsequently established. Reparation awarded. Illinois Glass Co. *v.* St. L.-S. F. Ry. Co., 8.

Rate on yellow-pine lumber from Lenwil, La., to Ash Grove, Kans., located on the Salina Northern Railroad, exceeded the junction point rate subsequently made applicable to Ash Grove. Reparation awarded. Dietz Lumber Co. *v.* Director General, 21.

Class E rate on crude clay from Buffalo Gap, S. Dak., to Des Moines, Iowa, exceeded lower commodity rate subsequently established. Reparation awarded. Refinite Co. *v.* Director General, 31.

Second-class rate on tin-foil from New York, N. Y., to Winston-Salem, N. C., exceeded lower rate subsequently established. Reparation awarded. Reynolds Tobacco Co. *v.* P. R. R. Co., 33.

Carriers in recognition of conditions and of the competitive nature of the commodities, have put copra and palm-kernel products on the same basis as cottonseed products, but this action on their part is not necessarily an admission that the higher rates charged were unreasonable or prejudicial. Southport Mill (Ltd.) *v.* Director General, 154 (161).

Third-class rate legally applicable on shipments of ivory-nut shavings from Rochester, N. Y., to North Birmingham, Ala., exceeded sixth-class rate subsequently established. Reparation awarded. Aetna Explosives Co. *v.* N. Y. C. R. R. Co., 170 (171).

Joint class B rate on terra cotta from St. Louis, Mo., to New Madrid, Mo., via an interstate route, exceeded lower class D rate subsequently established. Reparation awarded. Winkle Terra Cotta Co. *v.* Director General, 172.

On anthracite coal from Pennsylvania anthracite-coal district via Buffalo, N. Y., to Toledo, Ohio, both factors of combination rates increased. Lower rate applicable via another route subsequently established via route of movement. Reparation awarded. Gosline & Co. *v.* Director General, 220.

Fifth-class rate on saltpeter (nitrate of potash) from Carneys Point, N. J., to American Lake, Wash., formerly Du Pont and now called Camp Lewis, Wash., exceeded lower rate subsequently established. Reparation awarded. Du Pont de Nemours & Co. *v.* Director General, 246.

Commodity rate on cull apples from Peshastin, Cashmere, Wenatchee, and Monitor, Wash., to Portland, Oreg., exceeded lower rate subsequently established. Reparation awarded. Wittenburg-King Co. *v.* Director General, 260.

Fifth-class rate on rock board from Rockford, Ill., to Kansas City, Mo., and Minneapolis, Minn., exceeded lower commodity rate subsequently established. Reparation awarded. Rockford Paper Box Board Co. *v.* C., M. & St. P. Ry. Co., 262.

Sixth-class rate on stable manure from Camp Sherman, Ohio, to Parma, Ohio, exceeded lower commodity rate subsequently established. Reparation awarded. Swift & Co. *v.* Director General, 324 (325).

REDUCTION IN RATES—Continued.
By Carriers—Continued.
Rate on motor lubricating oil, in drums, from San Antonio, Tex., to Coffeyville, Kans., exceeded rate from Houston, Tex., and subsequently established from San Antonio. Reparation awarded. National Refining Co. *v.* Director General, 341.
Fourth-class rate on metal barrel churns from Bellewood, Ill., to Portland, Oreg., not found unreasonable as compared with lower commodity rate subsequently established. Sturges & Burn Mfg. Co. *v.* Director General, 345.
The voluntary reduction of a rate by carriers is not enough to support an award of reparation on shipments moving prior to the reduction. Id. (346).
Rates on cotton piece goods, l. c. l., from Boston, Mass., and other eastern seaboard points, to Springfield, Mo., via water and rail and rail-water-and-rail routes through Memphis, Tenn., exceeded the combination of intermediate rates to and from Memphis, subsequently established. Reparation awarded. Keet & Roundtree Dry Goods Co. *v.* Director General, 400.
Through second-class express rates on cream, in cans, from New Mexico and Texas points, via interstate routes, to El Paso, Tex., exceeded aggregate of intermediate rates subsequently established. Reparation awarded. Rio Grande Valley Creamery Co. *v.* Wells Fargo & Co., 425.
Combination rate, legally applicable, on matches from Chico, Calif., to Albuquerque, N. Mex., and Holbrook and Prescott, Ariz., exceeded lower rate in effect via another route and subsequently established via route of movement. Reparation awarded. Diamond Match Co. *v.* *v.* Director General, 597 (599).
Rates on cattle from Hereford and Abernathy, Tex., to Pocatello, Idaho, and Butte and Monida, Mont., exceeded lower rate subsequently established. Reparation awarded. Portland Cattle Loan Co. *v.* Director General, 597 (599).
Rate on bananas from Mobile, Ala., and New Orleans, La., to Miami, Okla., not found unreasonable as compared with lower rate to competing points in the same general territory, which rate was subsequently made applicable to Miami. Thomas Fruit Co. *v.* Director General, 605.
Combination rate on crushed stone from Tomkins Cove, N. Y., to points in New York exceeded joint commodity rate subsequently established. Reparation awarded. New York Commission of Highways *v.* Director General, 619 (620–621).
Class rates on sand and gravel from Buffalo, N. Y., to Ennerdale, Aloquin, and Flint, N. Y., exceeded commodity rate subsequently established. Reparation awarded. Id. (621–623).
On coal from Cowan, Pa., to Alkali, Ohio, combination rate legally applicable was higher than the combination assessed. Defendants subsequently established a joint rate equal to combination charged. *Held:* Rate charged found unreasonable to extent it exceeded rate subsequently established. Waiver of undercharges authorized. Diamond Alkali Co. *v.* Director General, 711.

REDUCTION IN RATES—Continued.
By Carriers—Continued.
Rate on ginger, pepper, cassia, and nutmegs, unground, from Seattle and Tacoma, Wash., to New York, N. Y., and other points in eastern defined territory exceeded rates from California terminals and subsequently established from Seattle and Tacoma. Reparation awarded. Frame & Co. *v.* Director General, 721.
Charges based on combination of rates to and from reconsigning points plus reconsignment charges found unreasonable to extent they exceeded joint through rates plus charges for reconsignment, subsequently established. Reparation awarded. Bennett Grain Co. *v.* Director General, 744.
Rates on cherries and fresh strawberries from White Salmon, Wash., to Sioux Falls, S. Dak., exceeded rates subsequently established. Reparation awarded. Haley & Lang Co. *v.* American Exp. Co., 747.
Following *Kern & Sons*, 40 I. C. C., 552, and *Reconsignment Case*, 47 I. C. C., 590, combination rate plus reconsignment charge found unreasonable to extent they exceeded joint through rate plus reconsignment charge in effect via another route and subsequently established via route of movement. Reparation awarded. Lowry Lumber Co. *v.* Director General, 751.
Rate on gasoline from Wilson, Okla., to El Paso, Tex., exceeded lower rate subsequently established. Reparation awarded. Sunland Oil Co. *v.* Director General, 753.
By Commission:
Rate on imported nitrate of soda from New Orleans, La., and Pensacola, Fla., to Fenn, Ark., found unduly prejudicial. Rate at least 2.5 cents lower than maintained on like traffic from the same points of origin to Joplin, Carl Junction, Atlas, Turck, and Pittsburg, prescribed. Equitable Powder Mfg. Co. *v.* Director General, 24 (27).
Combination rate on lumber from Merryville, La., to Orange, Tex., via De Ridder, La., and Mauriceville, Tex., found unreasonable as compared with rates from Merryville to Houston, and from other Louisiana points to Houston and Orange for greater distances. Reasonable maximum rate prescribed and reparation awarded. National Shipbuilding Co. of Texas *v.* K. C. S. Ry. Co., 104.
Rate on slack coal from Hume, Mo., to South Fort Smith, Ark., found unreasonable to extent it exceeded rate via route other than route of movement. Reasonable rate prescribed and reparation awarded. Fort Smith Spelter Co. *v.* Director General, 133.
Sixth-class rate on old rails from East St. Louis, Ill., to Boonville, Ind., found unreasonable to extent it exceeded or may exceed lower commodity rate in effect to Louisville, Ky. Reparation awarded. Zelnicker Supply Co. *v.* Director General, 135.
Fifth-class rate on sulphuric acid in tank-car loads, from Perth Amboy, N. J., to Philadelphia, Pa., found unreasonable to extent it exceeded lower commodity rate applicable via routes other than route of movement. Reasonable rate prescribed and reparation awarded. Du Pont de Nemours & Co. *v.* Director General, 151.
Rate on staves and heading from Star City, Ark., located on the Gould Southwestern Ry., to New Orleans, La., found unreasonable to extent it exceeded or may exceed the rate on like traffic from Gould, Ark., the junction point. Reparation awarded. Chop *v.* Director General, 182.

REDUCTION IN RATES—Continued.
By Commission—Continued.
Class A rate on lumber from New Orleans, La., to Violet, La., found unreasonable to extent it exceeded rate subsequently established by the Director General. Reparation awarded. Ruddock Orleans Cypress Co. *v.* Director General, 236.
Second-class any-quantity rate on smoothed zinc plate, c. l. and l. c. l., from Plymouth and Framingham, Mass., to Pacific coast points found unreasonable to extent it exceeded by more than 25 cents the c. l. and l. c. l. rates maintained on plate or sheet zinc. Reasonable rates prescribed and reparation awarded. Mohr & Sons *v.* N. E. S. S. Co., 265.
Rate of 15 cents per long ton on limestone from Jamesville, N. Y., to Solvay, N. Y., increased following *Fifteen Per Cent Case*, and again by Director General under General Order No. 28, to 40 cents. Upon protest rate reduced to 30 cents. *Held:* Rates charged on shipments moving after June 25, 1918, found unreasonable to extent they exceeded or may exceed rate of 25 cents prescribed herein. Reparation awarded. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280.
Rates on coal from wharves at New Bedford, Mass., to the plant of the New Bedford Extractor Co., at New Bedford, located just outside of the switching district, should not exceed by more than 5 cents per long ton the rates maintained from the wharves to points within the switching district. Reparation awarded. New Bedford Board of Commerce *v.* Director General, 320.
Combination class rate on high explosives from South Windsor, Conn., to Emporium, Pa., found unreasonable to extent it exceeded joint first-class rate in effect. Reasonable maximum rate prescribed and reparation awarded. Aetna Explosives Co. *v.* Director General, 333.
Class D rate on scrap iron from points in southeastern Arkansas to Kansas City, Mo., exceeded lower commodity rate from Tallulah, La., a farther distant point, to same destination. Reasonable rate prescribed and reparation awarded. Sonken-Galamba Iron & Metal Co. *v.* Director General, 339.
Fifth-class rate of 16 cents on nitrate of soda in bags from Port Richmond (Philadelphia), Pa., to Carney's Point, N. J., found unreasonable to extent it exceeded 11.3 cents, the aggregate of intermediate rates to and from Belmont (Philadelphia), Pa. Rate of 15 cents prescribed and reparation awarded on basis of 11.3-cent rate. Du Pont de Nemours & Co. *v.* Director General, 347.
Present intrastate rate, initiated by the Director General, on coal from Nelsonville, Ohio, a point in the Hocking field, to Aultman, Ohio, found unreasonable as compared with rate from Haydenville, Ohio. Rate applicable from the Hocking field to points on the Erie R. R. east of Akron, Ohio, to and including Ravenna, prescribed. National Fireproofing Co. *v.* Director General, 485.
Rate of $5.10 per ton on niter cake from Carney's Point, N. J., to Norfolk, Va., found unreasonable as compared with rates on other low-grade commodities between other points. Rate of $4 prescribed for future and reparation awarded on basis of $2.80 per ton. Du Pont de Nemours & Co. *v.* Director General, 499.
Rates legally applicable on gasoline in tank-car loads from Cushing, Okla., to Little Rock, Ark., found unreasonable to extent they exceeded lower rate in effect via routes other than route of movement. Reasonable rate prescribed and reparation awarded. Roxana Petroleum Co. of Oklahoma *v.* Director General, 607.

REDUCTION IN RATES—Continued.
By Commission—Continued.
Following *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, 625, rates on cedar poles and piling transported on more than one car, from Washington, Oregon, Idaho, Montana, and British Columbia to various states principally east of the Rocky Mountains, found unreasonable in so far as they exceeded rates on fir lumber in single carloads. National Pole Co. *v.* A., T. & S. F. Ry. Co., 625.
Rates on sand from complainant's plant near Turner, Kans., to destinations within the switching limits of Kansas City, Mo.-Kans., found unreasonable to extent they exceed 2 cents per 100 pounds and relatively unreasonable to extent they exceed the charges from Sirridge, Kans., a point within the switching limits. Reasonable maximum rate prescribed and reparation awarded. Kaw River Sand & Material Co. *v.* A., T. & S. F. Ry. Co., 683.
Rates on fresh meats in straight carloads, or in mixed carloads with packing-house products, from Kansas City, Kans., to Oklahoma City, Okla., found unreasonable to extent they exceed rates on the basis of the distance scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160. Reasonable maximum rate prescribed and reparation awarded. Sulzberger & Sons Co. *v.* C., R. I. & P. Ry. Co., 691.
Rates on horses and mules from Springfield and Lockwood, Mo., and Belleville, Kans., to Helena, Ark., found unreasonable to extent they exceeded rates in effect via other available routes. Reasonable rates prescribed and reparation awarded. Helena Traffic Bureau *v.* Director General, 708.
Rates on O'Cedar polish and various wax furniture and floor polishes, in metal cans, in boxes, l. c. l., from Chicago, Ill., Racine, Wis., Cincinnati, Ohio, and Boston, Mass., to Portland, Oreg., and on O'Cedar polish in metal cans, in boxes, and in glass, in boxes, on mops and mop handles, l. c. l. and in straight carloads from Chicago to Pacific coast terminals, found unreasonable. Reasonable rates prescribed and reparation awarded. Portland Traffic & Transportation Asso. *v.* B. & M. R. R., 733.
REFRIGERATOR CARS.
Jurisdiction of Commission to order express refrigerator service questioned following *R. R. Com'rs. of Florida*, 44 I. C. C., 645, in which it was held that the Commission is without authority to require carriers to acquire refrigerator cars for use in express service. Complainants, however, asked only that defendant haul express refrigerator cars furnished by shippers, and case cited held not controlling here. Campbell *v.* Southern Exp. Co., 633 (635–636).
REFUSAL.
Following *Wall Rope Works*, 49 I. C. C., 199, agent's act of refusing to accept certain shipments of rope and compelling shipper to forward as l. c. l. traffic, found to have been unauthorized, as embargo against c. l. traffic had been removed. Reparation awarded. Wall Rope Works (Inc.) *v.* P. R. R. Co., 337.

REFUSED SHIPMENT.

Upon arrival of shipment defendant wired complainant that consignee had refused delivery, and was advised to store. Defendant did not store promptly. *Held:* Demurrage should have terminated upon receipt of notice to store, and charges for storage under car demurrage rules the same as if the freight had remained in the car, found illegal. Piqua Milling Co. *v.* E. R. R. Co., 239.

Certain shipments refused and held more than 72 hours before reconsignment not entitled to joint through rates. Combination rates charged not found unreasonable. Kaufman & Sons Co. *v.* C. R. R. Co. of N. J., 268.

REHEARING. *See also* MODIFICATION; SUPPLEMENTAL REPORT.

Upon rehearing, findings in original reports, 42 I. C. C., 435, and 51 I. C. C., 28, in which ferry-car charges not shown unreasonable on shipments forwarded to defendant's transfer stations for shipment interstate, necessitating a back haul through loading points, adhered to. United Shoe Machinery Co. *v.* B. & M. R. R., 206.

Upon rehearing, fifth-class rate on rock board found unreasonable to extent it exceeded commodity rate on wood-pulp board, which rate was subsequently made applicable to rock board. Reparation awarded. Rockford Paper Box Board Co. *v.* C., M. & St. P. Ry. Co., 262.

RELATIONSHIP OF RATES.

Between Milwaukee and Sheboygan, Wis., prescribed. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (145).

Fifth-class rate on evaporated skimmed milk containing vegetable fat, from Jefferson and Oconomowoc, Wis., to De Ridder, La., found unreasonable to extent it exceeded the rate on like traffic from Milwaukee to Texas common points. Reasonable relationship of rates prescribed and reparation awarded. Hebe Co. *v.* Director General, 214.

Rate on blackstrap molasses, in tank-car loads, from certain Louisiana points to Orange and Beaumont, Tex., and present increased rates from and to the same points, found unreasonable to extent they exceed the rates from Shreveport, La., to points in Texas for like distances. Relationship of rates prescribed and reparation awarded. Orange Rice Mill Co. *v.* T. & N. O. R. R. Co., 661.

Class rates between points in trunk line territory and Carrollton, Ky., based upon the Cincinnati combinations, not found unduly prejudicial to Carrollton in their relation to rates between the same eastern points and other cities on the Ohio River between Cincinnati, Ohio, and Evansville, Ind. Commercial Club of Carrollton, Ky., *v.* Director General, 697.

Carrollton, Ky., found entitled to rates to and from New York, N. Y., and other eastern points that do not exceed the rates between Worthville, Ky., and the same points by more than the amounts which the rates between Cincinnati, Ohio, and Carrollton exceed those between Cincinnati and Worthville. Id. (702).

RELATIVE ADJUSTMENT. *See* ADJUSTMENT OF RATES; RELATIONSHIP OF RATES.

RELATIVE RATES. *See also* PREFERENCE AND PREJUDICES.

Carney's Point, N. J.: First-class rate on wet nitrocellulose from Norfolk, Va., to, exceeded lower commodity rate from Hopewell, Va., to which Norfolk is intermediate via route of movement. Reparation awarded. Du Pont de Nemours & Co. *v.* Director General, 247.

RELATIVE RATES—Continued.

Cleveland, Ohio: Rates legally applicable on mill cinder from, to Charlotte, N. Y., a point in the Rochester group, found unreasonable to extent they exceeded rates in effect to Dubois and Punxsutawney, Pa., points located in the Emporium group, as same rates generally apply to both groups. Reparation awarded. McKinney Steel Co. *v.* N. Y. C. R. R. Co., 449.

Fairmont, W. Va.: Rates on glass sand from Silica, Ohio, to, compared with rates to Pittsburgh from various points in Ohio, Indiana, and Illinois. Owens Bottle-Machine Co. *v.* B. & O. R. R. Co., 122 (126).

Idaho points: Rates on coal from Castle Gate, Helper, Price, and Sunnyside, Utah, to Boise, Nampa, and Caldwell, Idaho, not shown unreasonable as compared with rates between points in western and southwestern states for greater distances and from competing points on the U. P. and O. S. L. in Wyoming to same Idaho points. Compton Coal Co. *v.* D. & R. G. R. R. Co, 718.

Kansas City, Mo.: Class D rate on scrap iron from points in southeastern Arkansas to, exceeded lower commodity rate from Tallulah, La., a farther distant point, to same destination. Reasonable rate prescribed and reparation awarded. Sonken-Galamba Iron & Metal Co. *v.* Director General, 339.

Kansas City switching district: Rates on sand from complainant's plant near Turner, Kans., to destinations within the switching limits of Kansas City, Mo.-Kans., found unreasonable to extent they exceed 2 cents per 100 pounds and relatively unreasonable to extent they exceed the charges from Sirridge, Kans., a point within the switching limits. Reasonable maximum rate prescribed and reparation awarded. Kaw River Sand & Material Co. *v.* A., T. & S. F. Ry. Co., 683.

Le Roy, N. Y.: Rate on crushed stone from, to points in New York not found unreasonable as compared with rate from North Le Roy, N. Y., distance and other conditions considered. New York Commission of Highways *v.* Director General, 619 (624).

New Orleans, La.: Rates on shelled corn from Columbia, Aspen Hill, and Pulaski, Tenn., to, not shown unreasonable as compared with rates from Mt. Pleasant, Tenn., and other farther distant points. Park *v.* L. & N. R. R. Co., 703.

Orange, Tex: Combination rate on lumber from Merryville, La., to, via De Ridder, La., and Mauriceville, Tex., found unreasonable as compared with rates from Merryville to Houston and from other Louisiana points to Houston and Orange for greater distances. Reasonable rate prescribed and reparation awarded. National Shipbuilding Co. of Texas *v.* K. C. S. Ry. Co., 104.

San Antonio, Tex.: Rate on motor lubricating oil in drums from, to Coffeyville, Kans., exceeded rate from Houston, Tex., and subsequently established from San Antonio. Reparation awarded. National Refining Co. *v.* Director General, 341.

Sheboygan, Wis.: Class rates and distances from Sheboygan and Milwaukee, Wis., to various points, compared. Sheboygan Asso. of Commerce *v.* C. & N. W. Ry. Co., 140 (141).

Sidney, Mont.: Combination rate on mixed carloads of oranges and lemons from Lindsey, Calif., to, exceeded lower commodity rate to other points in the same general territory. Reparation awarded. Gamble Robinson Co. *v.* N. P. Ry. Co., 749.

RELATIVE RATES—Continued.

Wisconsin points: Fifth-class rate on evaporated skimmed milk containing vegetable fat from Jefferson and Oconomowoc, Wis., to De Ridder, La., found unreasonable to extent it exceeded or may exceed the rate on like traffic from Milwaukee to Texas common points. Reparation awarded. Hebe Co. *v.* Director General, 214.

RELEASED RATES. *See* VALUE.

REPARATION. *See* DAMAGES.

RETURN.

An allowance of 6 per cent for return upon investment and for maintenance other than depreciation is presumably insufficient. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280 (287).

Average return on investment of representative carriers serving the southwest, period 1913 to 1919, shown. Memphis-Southwestern Investigation, 515 (531).

RIGHT OF SHIPPER. *See* SHIPPER.

RISK. *See* MARINE INSURANCE.

RIVER CROSSINGS. *See also* MISSISSIPPI RIVER CROSSINGS.

Charges for a bridge service may be determined upon a basis somewhat different from that employed in the construction of charges at a crossing where the transfer is effected by barges or other floating equipment. Memphis-Southwestern Investigation, 515 (552).

ROUTES. *See also* STATE AND INTERSTATE.

Rate on glass soda bottles from Okmulgee, Okla., to Thibodaux, La., moving via Hope, Ark., and Alexandria, La., found unreasonable to extent it exceeded lower rate via New Orleans, La., Henryetta, Okla., and Denison, Tex., which was subsequently established over route of movement. Reparation awarded. Illinois Glass Co. *v.* St. L.-S. F. Ry. Co., 8.

On soda ash from Barberton, Ohio, to Shinglehouse, Pa., rate of 11.6 cents and route specified. Agent advised that route embargoes, and destination changed by agent to Ceres, N. Y., notify "Puritan Glass Co., Shinglehouse, Pa." Shipment moved through Ceres to Shinglehouse and rate of 16.6 cents assessed. *Held*: Shipment misrouted as rate of 11.6 applied over another route through Ceres to Shinglehouse. Reparation awarded. Gross *v.* Director General, 37.

Rate on molding sand from Utica, Ill., to Beaumont, Tex., not shown unreasonable as compared with lower combination rate in effect via East St. Louis, Ill. Beaumont Chamber of Commerce *v.* Director General, 110.

Rate on slack coal from Hume, Mo., to South Fort Smith, Ark., found unreasonable to extent it exceeded rate via route other than route of movement. Reasonable rate prescribed and reparation awarded. Fort Smith Spelter Co. *v.* Director General, 133.

Commodity rate, specified in bill of lading, canceled via route of movement, but was applicable via other competing routes. Higher rate legally applicable assessed. Contention that complainant should have been notified of cancellation, *Held:* Receiving carrier not obligated to turn traffic over to its competitor. Inman, Akers & Inman *v.* Director General, 146.

Fifth-class rate on sulphuric acid, in tank-car loads, from Perth Amboy, N. J., to Philadelphia, Pa., found unreasonable to extent it exceeded lower commodity rate applicable via routes other than route of movement. Reasonable rate prescribed and reparation awarded. Du Pont de Nemours & Co. *v.* Director General, 151.

ROUTES—Continued.

A shipper is not to be denied a reasonable rate over a through route merely because a lower rate could have been secured by the use of another route. Gosline & Co. *v.* Director General, 220 (223).

Shipments of soda ash found misrouted, as lower rate, consistent with complainant's routing instruction applied via route other than route of movement. Reparation awarded. Du Pont de Nemours & Co. *v.* C. R. R. Co. of N. J., 243.

Commodity rate on high explosives from Fayville, Ill, to Flat River, Mo., via the longer route through Salem, Ill., not found unreasonable, but via the shorter route through Ste. Genevieve, Mo., found unreasonable to extent it exceeded the joint first-class rate. Reparation awarded and reasonable maximum rate prescribed. Aetna Explosives Co. *v.* Director General, 350 (352).

Combination rate, legally applicable on matches from Chico, Calif., to Albuquerque, N. Mex., and Holbrook and Prescott, Ariz., exceeded lower rate in effect via another route and subsequently established via route of movement. Reparation awarded. Diamond Match Co. *v.* Director General, 431.

Complainant not shown damaged by undue prejudice due to refusal of certain lines to absorb switching charges of the Erie on transit grain to points in Buffalo, N. Y., but on shipments to points which could not have been reached by routes over which switching charges could have been avoided, without disregarding routing instructions, reparation awarded. Globe Elevator Co. *v.* Director General, 587 (594).

Rates legally applicable on gasoline in tank-car loads from Cushing, Okla., to Little Rock, Ark., found unreasonable to extent they exceeded lower rate in effect via routes other than route of movement. Reparation awarded. Roxana Petroleum Co. of Oklahoma *v.* Director General, 607.

Joint sixth-class rate on mill cinder from East Chicago, Ind., to Detroit, Mich., found unreasonable to extent it exceeded commodity rate via routes other than route of movement. Reasonable relationship of rates prescribed and reparation awarded. Interstate Iron & Steel Co. *v.* Director General, 669.

Regardless of the fact that complainant could have secured a lower rate had it routed its shipment via another route, it can not be urged that complainant should be required to suffer a loss resulting from an unreasonable exaction on the part of the defendants, and that the latter should be permitted to retain their excessive profits. Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (677–678).

Rates on horses and mules from Springfield and Lockwood, Mo., and Belleville, Kans., to Helena, Ark., found unreasonable to extent they exceeded rates in effect via other available routes. Reasonable rates prescribed and reparation awarded. Helena Traffic Bureau *v.* Director General, 708.

The fact of there being a lower rate over routes other than route of movement affords no basis for an award of reparation. Id. (709).

Following *Kern & Sons*, 40 I. C. C., 552, and *Reconsignment Case*, 47 I. C. C., 590, combination rate plus reconsignment charge found unreasonable to extent they exceeded joint through rate plus reconsignment charge in effect via another route and subsequently established via route of movement. Reparation awarded. Lowry Lumber Co. *v.* Director General, 751.

ROUTING INSTRUCTION. *See also* MISROUTING.

On lumber originally consigned to Chattanooga, Tenn., instructions mailed and telegraphed to defendant's agents at Nashville and Chattanooga for reconsignment to Phillipsburg, Pa. Due to error in transmission of telegram defendant diverted shipment to West Philadelphia, Pa., where demurrage accrued. Shipment ultimately forwarded to Phillipsburg. *Held:* Detention at Philadelphia due to railroad error and no demurrage lawfully accrued at that point. Reparation awarded. Southern Lumber & Mfg. Co. *v.* C. of G. Ry. Co., 225.

When a shipper's routing instructions are incomplete but are consistent with the cheapest available and resonable route, the carrier must send the shipment by that route or answer in damages for misrouting. Du Pont de Nemours & Co. *v.* C. R. R. Co. of N. J., 243 (244).

Affidavit introduced by complainant that agent was instructed but refused to route shipment via lower rated route. Affidavit also introduced by carrier's agent that consignor instructed shipment be given to carrier furnishing cars first, and so routed the shipments. *Held*: Misrouting not established. Zelnicker Supply Co. *v.* M. P. R. R. Corp., 715.

RULES OF PRACTICE. *See* ADMINISTRATIVE RULING; PLEADING AND PRACTICE.

SCALE OF RATES. *See* CLASS RATES; DISQUE SCALE; DISTANCE SCALE. SHREVEPORT SCALE.

SCRAP IRON. *See* JUNK.

SECTION 3. *See also* DISCRIMINATION; PREFERENCES AND PREJUDICES.

A lower basis of divisions of joint through passenger fares between points in California and Salt Lake City, Utah, and points north and east thereof, accorded complainant, than defendants allow each other of similar joint fares, found to be unlawful in violation of the second paragraph of section 3 of the act. Reparation awarded. Western Pacific R. R. Co. *v.* S. P. Co., 71.

Second paragraph of, embraces the imposition of an affirmative duty to interchange and forward traffic between connecting lines, and a prohibition that there shall be no discrimination in rates and charges between such connection lines. All parts of this provision are of equal authority and obligations. Id. (80).

To support an award of reparation under, complainant must show that loss of profit or other damage claimed was directly and solely due to lower rate enjoyed by a competitor. Park *v.* L. & N. R. R. Co., 703 (705).

SECTION 4. *See also* INTERMEDIATE POINTS; LONG AND SHORT HAUL; TERMINALS AND LOCAL.

Contention that the fourth section was violated, due to maintenance of a lower combination rate via a route other than route of movement. *Held*: As none of the shipments moved over the lower rated route any fourth section departure with respect thereto is beyond the issues of the case. Beaumont Chamber of Commerce *v.* Director General, 110 (111).

Notation on tariff, in accord with rule 77, held to be "a substantial compliance with the requirements of the fourth section." Du Pont de Nemours & Co. *v.* Director General, 247 (248).

Proviso of, as amended June 18, 1910, quoted. Park *v.* L. & N. R. R. Co., 703 (705).

SECTION 4—Continued.

Contention that the maintenance of higher rates from intermediate than from farther distant points were unlawful at the time of passage of the amended fourth section and could not be protected by applications filed with the Commission, not sustained, as the higher rates were the lawful rates notwithstanding the fact that through inadvertance lower rates were maintained from the farther distant points. Id. (705).

SECTION 15.

Contention that power of the Commission in prescribing divisions of joint rates is limited by the terms of section 15 to cases in which such joint rates were prescribed by the Commission, not sustained. Western Pacific R. R. Co. *v.* S. P. Co., 71 (73).

SET UP AND KNOCKED DOWN.

Present rating in official classification on iron and steel casings, in which no distinction is made between shipments set up or knocked down, found unreasonable to extent they exceed the ratings formerly in effect, in which such distinction was made. Dahlstrom Metallic Door Co. *v.* E. R. R. Co., 402 (409).

SHIPPER.

A railway, as a shipper over the lines of other carriers, is lawfully entitled to take advantage of joint rates applying to points on its own line, providing its shipments are consigned to such points and are, in good faith, sent to such billed destinations. Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (677).

SHORT LINE. *See also* TAP LINE.

Chicago & Calumet River R. R. Co., found to be a common carrier, which may lawfully participate in joint rates, or have its charges on interstate shipments absorbed under proper tariff provisions by the roads having the line haul. Statement of basis for its compensation to be agreed upon and must be filed with the Commission immediately upon its adoption. Chicago & Calumet River R. R. Co., 194.

Chicago & Calumet R. R. Co., described. Id. (195).

Lake Terminal R. R. Co., history of. National Tube Co. *v.* L. T. R. R. Co., 469 (471).

Lake Terminal R. R. Co., found to be a common carrier subject to the provisions of the act. Id. (476).

SHORT-LINE DISTANCE.

Where distance scales of rates are rigidly applied, all points should be given the benefit of their short-line distance, and it is impracticable where rates are constructed on a distance basis to follow the actual movement of traffic through alternative channels. Memphis-Southwestern Investigation, 515 (545).

SHREVEPORT SCALE. *See also* CLASS RATES; DISTANCE SCALE.

Table showing to what extent the Shreveport scale would change the rates from St. Louis, Mo., and Memphis, Tenn., to typical stations in Arkansas. Memphis-Southwestern Investigation, 515 (525, 526).

Table showing how the Shreveport scale percentages compare with those observed in the west and southwest generally. Id. (536).

SPECIAL DOCKET.

Claims filed by complainant for purpose of tolling the statute of limitations and like action taken by defendant who never filed special docket application. Complainant advised that application would be filed and have prompt consideration. *Held:* As complainant lulled into belief that its rights were protected, finding in 49 I. C. C., 586, in which claims held abandoned, reversed herein. Rockford Paper Box Board Co. *v.* C., M. & St. P. Ry. Co., 262.

STATE AND INTERSTATE.

Shipments tendered unrouted and carrier forwarded via an interstate route. Lower rate in effect via an intrastate route. *Held:* Shipments misrouted. Reparation awarded. Fort Smith Commission Co. *v.* Director General, 234.

Class rates from Natchez, Miss., for distances not in excess of 350 miles to points in Arkansas found unduly prejudicial to Natchez of Little Rock, Ark., and of intrastate traffic in Arkansas, to extent they exceed by more than reasonable charges for the river crossing, prescribed herein, the corresponding class rates from Little Rock to same destinations for like distances. Memphis-Southwestern Investigation, 515 (533, 575).

Table comparing Arkansas intrastate class rates with interstate class rates from Memphis, Tenn., to Arkansas points, for like distances. Id. (539).

Rates from Memphis, Tenn., may appropriately be somewhat higher than the Arkansas intrastate rates because of the additional service involved in crossing the Mississippi River. Id. (540).

Existing class rates between Memphis, Tenn., and points on class A railroads in Arkansas are unreasonable and unduly prejudicial to Memphis, to extent they exceed by more than reasonable bridge tolls prescribed herein the corresponding class rates applicable for like distances to intrastate traffic in Arkansas. Id. (541, 573-574).

Traffic moves between Memphis, Tenn., and points in the state of Arkansas under transportation conditions that are substantially similar, except for the river crossing, to the conditions governing the corresponding movement of traffic within the state of Arkansas. Id. (541, 574).

Existing class rates from Memphis, Tenn., to points in southern Missouri found unreasonable and unduly prejudicial to Memphis to extent they exceed by more than reasonable bridge tolls, prescribed herein, the corresponding class rates in effect from St. Louis, Mo., to same points for like distances. Id. (544, 574).

Traffic moves from Memphis, Tenn., to points in southern Missouri under transportation conditions that are substantially similar, except for the river crossing, to the corresponding movement of traffic from St. Louis, Mo., to same destinations. Id. (544, 574).

Table comparing the interstate rates for the first five classes from Monroe, La., to certain Arkansas points with Arkansas intrastate rates. Id. (554).

Class rates from Monroe and Shreveport, La., to points on class A railroads in southern Arkansas found unreasonable and unduly prejudicial to Monroe and Shreveport, of competing points in Arkansas to extent they exceed for like distances the corresponding class rates, herein prescribed. applicable to intrastate traffic in Arkansas. Id. (555, 575–576).

Transportation conditions governing movement of traffic from Monroe and Shreveport, La., to points in Arkansas are substantially similar to those governing intrastate traffic in Arkansas. Id. (555, 576).

STATE AND INTERSTATE—Continued.
Through rates on fertilizer from Mobile, Ala., to stations on the S. P. in Louisiana found unreasonable and unduly prejudicial of New Orleans, La., to extent they exceed the intrastate rates from New Orleans to same destinations by more than the rates from Mobile to New Orleans. Reparation awarded. Virginia-Carolina Chemical Co. *v.* Director General, 583.
STATE COMMISSION.
Basis used by Illinois commission in fixing ratings. Illinois Classification, 290 (298).
STATE LINE.
Illinois-Indiana line does not divide diverse transportation conditions, the territory in the two states being essentially similar in character. Illinois Classification, 290 (301).
STATE RATES.
Rate of 15 cents per long ton on limestone from Jamesville, N. Y., to Solvay, N. Y., increased, following *Fifteen Per cent Case* and again under General Order No. 28, to 40 cents. Upon protest rate reduced to 30 cents. *Held:* Rates charged on shipments moving after June 25, 1918, found unreasonable to extent they exceeded or may exceed rate of 25 cents prescribed herein. Reparation awarded. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280.
By section 10 of the federal control act the duty of determining the justness and reasonableness of intrastate rates initiated by the Director General, is laid upon the Commission. Solvay Process Co. *v.* D., L. & W. R. R. Co., 280 (281); Swift & Co. *v.* Director General, 324 (325–326); Boldt Paper Mills *v.* Director General, 331; National Fireproofing Co. *v.* Director General, 485.
Present intrastate rate, initiated by the Director General, on coal from Nelsonville, Ohio, a point in the Hocking field, to Aultman, Ohio, found unreasonable to extent it exceeded rates from the Hocking field to points on the E. R. R. east of Akron, Ohio, to and including Ravenna. National Fireproofing Co. *v.* Director General, 485.
State rates in effect prior to June 25, 1918, not initiated by the President within the meaning of the federal control act, and the Commission is without jurisdiction to consider them. New York Commission of Highways *v.* Director General, 619 (620).
STATUTE OF LIMITATION. *See* LIMITATION OF ACTION.
STIPULATION. *See* AGREEMENT.
STORAGE CHARGES.
Upon arrival of shipment of sacked corn meal defendant wired complainant that consignee had refused delivery and was advised to store. Defendant did not store promptly. *Held:* Demurrage should have terminated upon receipt of notice to store, and charges for storage under car demurrage rules the same as if the freight had remained in the car, found illegal. Piqua Milling Co. *v.* E. R. R. Co., 239.
Demurrage charges increased after shipment had left point of origin, and upon arrival at destination, increased charges assessed. *Held:* Off-track storage not in transit, track storage, and demurrage are controlled by tariffs in effect contemporaneously with the accrual of these services; off-track storage in transit, by tariffs in effect upon date of shipment. United Shoe Machinery Corp. *v.* Director General, 253 (256).
STRANGER TO THE RECORD. *See* PARTIES.

SUBNORMAL RATE.

When the rate compared is clearly shown to be less than that which the carrier could reasonably be required to publish, the Commission can not use that subnormal rate as a measure of the reasonableness of the rates on commodities, although they possess similar transportation characteristics. Carnation Milk Products Co. *v.* Director General, 665 (668).

SUBSEQUENTLY ESTABLISHED RATE. *See* REDUCTION IN RATES (BY CARRIERS).

SUIT.

Bill of lading provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay, found not to prohibit payment of meritorious claims seasonably filed with the carrier after the two year and one day period has elapsed, but in that they do not accord the shipper the right to a reasonable period after declination of a claim within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, discriminatory, and unduly prejudicial. Reasonable provision prescribed. Decker & Sons *v.* Director General, 453.

Shippers ought not to be required to incur expense and go through formal procedure of instituting a suit which the carrier has no intention of defending or to which it may have no defense. Id. (459).

When a shipper has complied with carrier's requirements with respect to duly filing a claim, he is entitled to a reasonable period after the declination of the claim within which to institute suit if he so desires. Id. (460).

Defendants may reasonably and properly provide that the period prescribed within which suit shall be instituted after the declination of a claim shall date from the definite declination in writing of the claim. Id. (460).

No ruling ever made by the Commission prohibiting carriers from paying claims seasonably filed, on the ground that shipper permitted two years and one day to elapse without instituting suit. Id. (461).

SUPPLEMENTAL REPORT. *See also* MODIFICATION; REHEARING.

In original report 52 I. C. C., 439, 460, carriers required to make effective, rates not in excess of the aggregate of intermediate rates when lower than joint through rates from Atlantic seaboard territory to Colorado common points via Galveston, Tex. Joint rates include insurance against marine risks, but ocean factors of the combination rates do not. Original report modified to permit an increase in combination rates by cost of insurance. Public Utilities Commission of Colorado *v.* A., T. & S. F. Ry. Co., 374.

In original report 53 I. C. C., 344, rates on printing, book, and wrapping paper from Kalamazoo and other Michigan mills to eastern trunk line territory, found unduly prejudicial of Virginia points, which carriers attempted to remove by submission of an emergency basis of rates. *Held:* Commission can not approve adjustment submitted by the carriers, even as an emergency measure and undue prejudice found to exist required to be removed. Michigan Paper Mills Traffic Asso. *v.* N. Y. C. R. R. Co., 679.

SWITCH CONNECTION.

Although reasonably practicable, since complainant has not provided a private track with which connection could be made, complainant not entitled to an order requiring a switch connection with a proposed private track from its mine to the line of the N. & W. at Mathi's spur, Quaker, W. Va. Virginia Coal & Fuel Co. *v.* N. & W. Ry. Co., 61.

SWITCHING. *See also* ABSORPTION.

Carriers within their rights in establishing reasonable territorial limits for the operation of switching engines and in giving industries within those limits the benefit of any resulting economies. New Bedford Board of Commerce *v.* Director General, 320 (322).

Collection of switching charges of the Norfolk & Portsmouth belt line on noncompetitive traffic while absorbing such charges on shipments originating at competitive points not found unreasonable under section 1 of the act to regulate commerce but unreasonable under section 10 of the Federal control act. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (391).

SWITCHING DISTRICT. *See also* CHICAGO SWITCHING DISTRICT.

Rates on coal from wharves at New Bedford, Mass., to plant of the New Bedford Extractor Co., at New Bedford, located just outside of the New Bedford switching district, found unreasonable to extent it exceeded by more than 5 cents per long ton the rates to points within the switching district. Reparation awarded. New Bedford Board of Commerce *v.* Director General, 320.

If tariff fails to give the territorial boundaries of a switching district or to specify the industries to which rates apply, the switching limits should at least be plainly indicated by appropriate markings. Id. (321).

Charges to points without the switching limits may not only be higher for the greater distance but for the different character of service, where more expensive. Such charges should not exceed what is sufficient properly to recompense the carrier for the extra service rendered. Id. (322).

Carriers are within their rights in establishing reasonable territorial limits for the operation of their switching engines and in giving industries within those limits the benefit of any resulting economies. Id. (322).

Rates on sand from complainant's plant near Turner, Kans., to destinations within the switching limits of Kansas City, Mo.-Kans., found unreasonable to extent they exceed 2 cents per 100 pounds and relatively unreasonable to extent they exceed charges from Sirridge, Kans., a point within the switching limits. Reasonable maximum rate prescribed and reparation awarded. Kaw River Sand & Material Co. *v.* A., T. & S. F. Ry. Co., 683.

SYSTEM.

The uniform scale of class rates approved herein should apply without the addition of arbitraries to traffic moving over a single line or over two or more lines that are under the same management and control, and arbitraries herein approved are not to be increased 25 per cent. Memphis-Southwestern Investigation, 515 (539).

TAP LINES. *See also* SHORT LINE.

Divisions received by, out of the through rate should have a proper relation to the service which they perform. New Orleans, Natalbany & Natchez Ry. Co. *v.* I. C. R. R. Co., 113 (116).

In laying down a general rule for determining divisions of, it is impracticable to require a computation in each case of the actual distance moved by engines or cars in effecting deliveries. Id. (116).

TARIFF.

If tariff fails to give the territorial boundaries of a switching district or to specify the industries to which rates apply, the switching limits should at least be plainly indicated by appropriate markings. New Bedford Board of Commerce *v.* Director General, 320 (321).

TARIFF—Continued.

Should inform the public definitely and clearly as to the application of the rates named therein. Id. (321).

The law requires that the tariff shall name just and reasonable rates and charges which shall be collected by the carrier, but does not specify which of the parties to the transportation shall pay them. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).

TARIFF CIRCULAR. *See* ADMINISTRATIVE RULING.

TARIFF INTERPRETATION.

On old thrashing engines, billed as scrap iron, rate on secondhand machinery assessed. *Held*, Tariff description of scrap iron, which applies "on scraps or pieces of iron or steel of value for remelting purposes only," found not applicable to shipments here involved. Fargo Iron & Metal Co. *v.* N. P. Ry. Co., 65.

Tariff must be construed in its entirety considering both the limitations on its title-page and rules contained therein. Commission can not consider only the part of the rule that is favorable to complainant's contention, and ignore provisions of the tariff that make clear its application. United Shoe Machinery Corp. *v.* Director General, 253 (255, 256).

TARIFF RULE.

Tariff rule in connection with a rate on wheat providing that when a car of less than 80,000 pounds was furnished for carrier's convenience, the marked capacity of the car used, but not less than 60,000 pounds, would govern, found unreasonable. Reparation awarded and reasonable rule prescribed. Northern Grain & Warehouse Co. *v.* O. T. Ry. Co., 101; Northern Grain & Warehouse Co. *v.* Director General, 488.

TERMINAL COMPANY.

Authority to establish at Chicago, Ill., a terminal charge of 2 cents per 100 pounds to apply on interstate l. c. l. traffic between points beyond Chicago and industries and universal freight stations located on the C. W. & T. Co., granted. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).

THEFT. *See* PILFERAGE.

THROUGH AND LOCAL.

Rate charged on two carloads of rice bran from Iota and Welsh, La., to Childress, Tex., exceeded aggregate of intermediate rates. Reparation awarded. Orange Rice Milling Co. *v.* Director General, 19.

Joint rate on sawdust from Minneapolis, Minn., to Cherokee, Iowa, exceeded the aggregate of intermediate rates in effect to and from Sheldon, Iowa, over same route of movement. Reparation awarded. Partridge Lumber Co. *v.* Director General, 29.

Joint rate on grain from points in Illinois via Peoria, Ill., to points in eastern trunk line territory exceeded aggregate of intermediate rates to and from Peoria. Peoria Board of Trade *v* A., T. & S. F. Ry. Co., 42 (50).

Fifth-class rate of 16 cents on nitrate of soda in bags from Port Richmond (Philadlphia), Pa., to Carneys Point, N. J., found unreasonable to extent it exceeded 11.3 cents, the aggregate of intermediate rates to and from Belmont (Philadelphia), Pa. Rate of 15 cents prescribed and reparation awarded on basis of 11.3 cent rate. Du Pont de Nemours & Co. *v.* Director General, 347.

THROUGH AND LOCAL—Continued.

Rates on fir and hemlock lumber, lath, mining timbers, mine wedges, fence posts, and railroad ties, in straight or mixed carloads, from Portland, Oreg., to points on the S. P. south and east of San Francisco and bay points found unreasonable to extent they exceeded the aggregate of intermediate rates. Reparation awarded. Inman-Poulsen Lumber Co. *v.* S. P. Co., 357 (361).

Mere fact that rates from one point exceeded the aggregate of intermediate rates from another point does not establish that the rates from the first point were unreasonable. Id. (360).

Rates on cotton piece goods, l. c. l. from Boston, Mass., and other eastern seaboard points, to Springfield, Mo., via water-and-rail and rail-and-water routes through Memphis, Tenn., exceeded the combination of intermediate rates to and from Memphis. Reparation awarded. Keet & Roundtree Dry Goods Co. *v.* Director General, 400.

Through second-class express rates on cream, in cans, from New Mexico and Texas points, via interstate routes, to El Paso, Tex., exceeded aggregate of intermediate rates subsequently established. Reparation awarded. Rio Grande Valley Creamery Co. *v.* Wells, Fargo & Co., 425.

Class rate on fuel wood from Hermanville, Mich., to Mitchell, S. Dak., exceeded aggregate of intermediate rates to and from La Crosse, Wis. Measure of reasonable rate prescribed and reparation awarded. Anderson Lumber Co. *v.* Director General, 467.

Rate on window glass from Fredonia, Kans., to Tulsa, Okla., a point intermediate to Okmulgee, Okla., decreased, resulting in lower aggregate of intermediate rates to and from that point. Fourth section departure not protected by application and must be promptly corrected. Curtis, Booth & Bentley Co. *v.* Director General, 511 (512–513).

Rate on gasoline engines from Flint, Mich., to Fort Worth, Tex., exceeded the aggregate of intermediate rates to and from St. Louis, Mo., and other Mississippi River gateways. Reparation awarded. Chevrolet Motor Co. of Texas *v.* Director General, 601.

Joint commodity rates on potatoes from Albany and Avon, Minn., to Creston, Iowa, and from Freeport, Minn., to Burlington, Iowa, found unreasonable to extent they exceeded the aggregate of intermediate rates to and from St. Cloud, Minn. Reparation awarded and measure of reasonable maximum rates prescribed. Hechtman *v.* Director General, 672.

THROUGH ROUTES AND JOINT RATES.

For transportation of coal from mines on the M. P. and the Frisco in the Pittsburg district in Kansas by way of the M., K. & T. to Dewey, Okla., prescribed. Dewey Portland Cement Co. *v.* A., T. & S. F. Ry. Co., 1 (6).

Request of the Illinois Traction System for establishment of, between points on its line and points on the N. Y. C., *Held:* Such routes should be established on all traffic except coal, between Lincoln and Mackinaw, with rates not higher than from and to Peoria, to and from Mechanicsburg, and to Fetzer, with rates no higher than from Springfield; from elevators on the Illinois Traction System to all points on the N. Y. C., with rates no higher than from Peoria on grain. St. Louis Electric Terminal Ry. Co. *v.* C., C., C. & St. L. Ry. Co., 52 (57, 59).

Carriers having elected to join in through routes and joint fares can not be heard to say that possibilities of reciprocity as between themselves and smaller possibilities of reciprocity as between each of them and complainant justify the discrimination complained of. Western Pacific R. R. Co. *v.* S. P. Co., 71 (81).

THROUGH ROUTES AND JOINT RATES—Continued.
On glass sand from Silica, Ohio, to Fairmont and Clarksburg, W. Va., prescribed. Owens Bottle-Machine Co. *v.* B. & O. R. R. Co., 122 (129).
TOLLS. *See* BRIDGE TOLLS.
TON-MILE REVENUE. *See* EARNINGS.
TONNAGE. *See* VOLUME OF TRAFFIC.
TRACKAGE ARRANGEMENT.
Practice with respect to furnishing coal cars to complainant, located at Equality, Ill., on a branch line of, and served singly by, the L. & N., not shown unduly preferential of a neighboring competing mine, located at Grayson, Ill., on the same branch line, and served under a joint trackage arrangement by both the L. & N. and C., C., C. & St. L. Gallatin Coal & Coke Co. *v.* L. & N. R. R. Co., 491.
Carriers may not through trackage arrangements extend preferential treatment to one shipper to the prejudice of another, or continue such an arrangement if it develops into an undue advantage to a favored shipper. Id. (493).
"TRAINLOAD LOTS."
Tariff should be amended at once by cancellation of the item relating to, as manipulation of the grossest kind is obviously possible under such a provision. Portsmouth Asso. of Commerce *v.* S. A. L. Ry. Co., 377 (390).
TRANSIT ARRANGEMENTS.
Concentration: Rates and practices of the M. P. governing the concentration of Arkansas cotton at Memphis, Tenn., not shown unduly prejudicial to Memphis or otherwise unlawful, but a uniform basis of constructing the rates should be devised. Memphis-Southwestern Investigation, 515 (548, 574–575).
Milling: Shipments of wheat from Shickley and Dorchester, Nebr., to Chicago, Ill., stored at Lincoln, Nebr., and milled in transit at Aberdeen, S. Dak., forwarded by carrier's agent via Sioux City, Iowa, by which route milling in transit was not provided for. Reparation awarded for misrouting to extent that charges exceeded those applicable by way of Omaha. Marfield Grain Co. *v.* Director General, 39.
TRANSPORTATION CONDITIONS. *See also* CIRCUMSTANCES AND CONDITIONS.
Illinois-Indiana state line does not divide diverse transportation conditions, the territory in the two states being essentially similar in character. Illinois Classification 290 (301).
Outline of certain evidence bearing upon the similarity of, in Kansas, Missouri, Arkansas, Oklahoma, Louisiana, and Texas. Appendix 2. Memphis-Southwestern Investigation, 515 (523, 580–582).
Traffic moves between Memphis, Tenn., and points in Arkansas under transportation conditions that are substantially similar, except for the river crossing, to the conditions governing the corresponding movement of traffic within the state of Arkansas. Id. (541, 574).
Traffic moves from Memphis, Tenn., to points in southern Missouri under transportation conditions that are substantially similar, except for the river crossing, to the corresponding movement of traffic from St. Louis, Mo., to same destinations. Id. (544, 574).
Traffic from Natchez, Miss., to points in Arkansas moves under transportation conditions that are substantially similar to those governing the corresponding movement from Little Rock, Ark., except for the river crossing, and from Memphis, Tenn. Id. (553, 575).
The transportation conditions governing the movement of traffic from Monroe and Shreveport, La., to points in Arkansas are substantially similar to those governing intrastate traffic in Arkansas. Id. (555, 576).

TRAP CAR SERVICE.

Upon rehearing, findings in original reports, 42 I. C. C., 435 and 51 I. C. C., 28, in which ferry-car charges not shown unreasonable on shipments forwarded to defendant's transfer stations for shipment interstate, necessitating a back haul through loading points, adhered to. United Shoe Machinery Co. *v.* B. & M. R. R., 206.

TRESPASS.

Car of coal placed on private sidetrack March 16, 1917, and unloaded same day. Sidetrack extended in part over tract not owned by complainant, and due to delays in the purchase thereof notice served upon defendant that legal proceedings would be instituted if rolling stock should be moved over this sidetrack. Defendant did not remove car until March 20. *Held:* As tariff provided that "a car held for unloading is considered released when lading removed," and car was not held for or by complainant after March 16, demurrage unauthorized. Reparation awarded. Holland Aniline Co. *v.* P. M. Ry. Co., 617.

TUNNEL COMPANY.

Authority to establish at Chicago, Ill. a terminal charge of 2 cents per 100 pounds to apply on interstate l. c. l. traffic between points beyond Chicago and industries and universal freight stations located on the C. W. & T. Co., granted. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).

TWO CARS.

Following *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, 625, rates on cedar poles and piling transported on more than one car, found unreasonable in so far as they exceed rates on fir lumber in single carloads. Reparation awarded. National Pole Co. *v.* A., T. & S. F. Ry. Co., 625.

TWO-FOR-ONE.

Fifty-foot car ordered for shipment of furniture and two 36-foot cars furnished, but no "two-for-one" rule applicable. Combination rate assessed found unreasonable to extent it exceeded lower joint rate, minimum 20,000 pounds, applicable to cars of all sizes. Reparation awarded. Tull & Gibbs *v.* N. & W. Ry. Co., 17.

UNDERCHARGES.

Combination rate legally applicable was higher than the combination assessed. Defendants subsequently established a joint rate equal to combination charged. *Held:* Rate charged found unreasonable to extent it exceeded rate subsequently established. Waiver of undercharges authorized. Diamond Alkali Co. *v.* Director General, 711.

UNIFORM BILL OF LADING.

Section 10 of, construed. Decker & Sons *v.* Director General, 453 (457).

Contention that section 10 of, permits a waiver of any of the terms or conditions of the bill of lading and that carriers have waived the two-year-and-one-day period by having paid certain claims after more than two years and one day had elapsed, although suit had not been instituted, not sustained. Id. (457).

UNION RAILROAD COMPANY.

Found to be a common carrier subject to the act, which may lawfully receive from its trunk line connections, under appropriate tariffs, reasonable divisions of joint rates or absorptions of switching charges. American Steel & Wire Co. *v.* N. & S. S. Ry. Co., 353.

History of. Id. (355).

VALUE.

Official classification ratings on scrap leather and scrap leatherboard in straight or mixed carloads, of a declared or agreed value not exceeding 3.5 cents per pound, found unreasonable to extent it exceeds sixth class, minimum 30,000 pounds. Reparation denied. Atlas Leather Mfg. Co. *v.* P., C., C. & St. L. R. R. Co., 394.

If classification were based on value, the number of classes would be too large and the refinement too subtle for practical operation. McCrory Stores Corporation *v.* Director General, 423 (424).

Rate legally applicable on blackstrap molasses, in tank-car loads, limited to blackstrap the "declared value of which does not exceed 8 cents per gallon," published without the Commission's authority and, under the second Cummins amendment, void and unlawful. Orange Rice Mill Co. *v.* T. & N. O. R. R. Co., 661 (663).

VOLUME OF TRAFFIC. *See also* CIRCUMSTANCES AND CONDITIONS.

The products of the cottonseed crushing season of 1916–1917 were in excess of 4,000,000 tons. Southport Mill (Ltd.) *v.* Director General, 154 (161).

Important element in the determination of reasonable rates, but that element is only one of the many that must be considered. Id. (162).

Ton-miles of revenue-freight per mile in Arkansas, Oklahoma, Louisiana, Texas, and southern Missouri for year ended June 30, 1916, shown. Memphis-Southwestern Investigation, 515 (523).

Increasing volume in movement of cotton from Missouri Pacific stations into Memphis, Tenn., 1905–1916, shown. Id. (548).

Movement of l. c. l. traffic in both directions between Memphis, Tenn., and Kansas City, Mo., for the month of September, 1917, shown. Id. (561).

Table from annual report of the Chief of Engineers, United States Army, for the year 1916, showing tonnage transported via the Cumberland River below Nashville, Tenn., for the years 1906–1915, inclusive. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (654).

VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).

WAIVER. *See* UNDERCHARGES.

WAR.

Demurrage charges on petroleum products, in tank-car loads, shipped to Kassel, La., for export, accruing because steamers were diverted to other ports on account of war requirements, found unreasonable and unduly prejudicial to extent they exceeded those which would have accrued under 10 days' free-time rule in effect at New Orleans and other Louisiana ports. Reparation awarded. New Orleans Refining Co. *v.* L. Ry. & Nav. Co., 131.

WAR TAX.

Following *Zelnicker Supply Co.*, 53 I. C. C., 308, the Commission is without power to order refund of war taxes and may not properly include in an award of reparation the amount so paid. Orange Rice Milling Co. *v.* Director General, 19 (20); Reynolds Tobacco Co. *v.* P. R. R. Co., 33 (34); Gross *v.* Director General, 37 (38); Marfield Grain Co. *v.* Director General, 39 (41); National Shipbuilding Co. of Texas *v.* K. C. S. Ry. Co., 104 (105–106); Brock Candy Co. *v.* A. G. S. R. R. Co., 107 (109); Beaumont Chamber of Commerce *v.* Director General, 110 (112); Zelnicker Supply Co. *v.* Director General, 135 (136); Du Pont de Nemours & Co., *v.* Director General, 151 (153); Acme Cement Plaster Co. *v.* Director General, 179 (182); Gosline & Co. *v.* Director General, 220

WAR TAX—Continued.
(224); Southern Lumber & Mfg. Co. *v.* C. of G. Ry. Co., 225 (227); Fort Smith Commission Co. *v.* Director General, 234 (235); Ruddock Orleans Cypress Co. *v.* Director General, 236 (238); Piqua Milling Co. v. E. R. R. Co. 239 (242); National Refining Co. *v.* Director General, 341 (342); Aetna Explosives Co. *v.* Director General, 350 (352); Chevrolet Motor Co. of Texas *v.* Director General, 601 (604); Roxana Petroleum Co. of Oklahoma *v.* Director General, 607 (610); Hechtman *v.* Director General, 672 (674); Mississippi River & Bonne Terre Ry. *v.* Director General, 674 (678); Frame & Co. *v.* Director General, 721 (723); Bennett Grain Co. *v.* Director General, 744 (746); Lowry Lumber Co. *v.* Director General, 751 (752); Sunland Oil Co. *v.* Director General, 753 (754).

Although the Commission has no power to award refund of, this holding is not to be construed as interposing any obstacle to refund in accordance with regulations promulgated by the Commissioner of Internal Revenue. Piqua Milling Co. *v.* E. R. R. Co., 239 (242).

WATER-AND-RAIL. *See also* OCEAN-AND-RAIL; RAIL-AND-WATER.

Rates on cotton piece goods, l. c. l., from Boston, Mass., and other eastern seaboard points, to Springfield, Mo., via water-and-rail and rail-water-and-rail routes through Memphis, Tenn., exceeded the combination of intermediate rates to and from Memphis, subsequently established. Reparation awarded. Keet & Roundtree Dry Goods Co. *v.* Director General, 400.

WATER CARRIERS. *See* BOAT LINES.

WATER RATES. *See* PORT TO PORT RATES.

WATER TRANSPORTATION.

Table from annual report of the chief of engineers, United States Army, for the year 1916, showing tonnage transported via the Cumberland River below Nashville, Tenn., for the years 1906–1915, inclusive. Murfreesboro Board of Trade *v.* L. & N. R. R. Co., 648 (654).

WEAK LINE.

Whether or not a line is strong or weak is not an essentially determinative factor in deciding discrimination. Western Pacific R. R. Co. *v.* S. P. Co., 71 (79).

Imperative need of the tunnel company for additional operating revenue, a terminal charge of 2 cents per 100 pounds to apply on interstate traffic between points beyond Chicago and industries and universal freight stations located on the C. W. & T. Co., granted. Chicago Warehouse & Terminal Co. Terminal Charges, 363 (371).

WEATHER INTERFERENCE.

Demurrage charges on salvaged barley, accruing because of inability to unload, due to frozen condition of shipments, and because cars were bunched, not shown unreasonable or unlawful following *Davis Sewing Machine Co.*, 51 I. C. C., 191. Delp Grain Co. *v.* Director General, 175.

WEIGHT. *See* MINIMUM WEIGHT.

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